

S. C. M.
AN
E N Q U I R Y

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THE PUNISHMENT OF DEATH IS NECESSARY

I N

P E N N S Y L V A N I A .

W I T H

N O T E S A N D I L L U S T R A T I O N S .

BY WILLIAM BRADFORD, ESQ.

TO WHICH IS ADDED,

AN ACCOUNT OF THE GOAL AND PENITENTIARY
HOUSE OF PHILADELPHIA, AND OF THE IN-
TERIOR MANAGEMENT THEREOF.

B Y

C A L E B L O W N E S ,

O F

P H I L A D E L P H I A .

If we enquire into the cause of all human corruptions, we shall find that they proceed from the impunity of crimes, and not from the moderation of punishments,

MONTESQ.

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ADVERTISEMENT.

THE following Memoir was written at the request, and presented to the Governor of Pennsylvania, on the third day of last December. The nature of this communication, as well as the necessity of completing it by that day, required brevity; and a more extended view of the subject was, on many accounts, inexpedient. Hence, some information, which might have been proper in a work designed for general circulation, was suppressed, and the experience of other countries was rather glanced at than explained.

It having been thought advisable to publish this Memoir in its present form, an opportunity was afforded the writer of making such additions as his other avocations would permit. Further time would have enabled him to furnish more accurate and particular information of the experience of the other States: but those who have interested themselves in this publication, think it ought not to be any longer delayed.

The additional information might have been advantageously blended with the original memoir: but as the Senate of the Commonwealth have honored that work, by placing it on their journals, there was a propriety in keeping it distinct. The new matter is therefore thrown into the form of Notes and Illustrations at the end of the Memoir; a few paragraphs only, necessary to introduce the notes, being added to the text.

Although

Although the world has seen a profusion of Theory on the subject of the Criminal Law, it is to be regretted that so few writers have been solicitous "to throw the light of experience upon it." To supply, in some measure, this defect; to collect the scattered rays which the juridical history of our own and other countries afford, and to examine how far the maxims of philosophy abide the test of experiment, have, therefore, been the leading objects of this work. The facts adduced, are stated with as much brevity as was consistent with clearness; and, as accuracy was indispensable, none have been lightly assumed, and few without a coincidence of authorities.

Philadelphia, Feb. 26, 1793.



ADVERTISEMENT

TO THE

LONDON EDITION.

THE following interesting publication appears to be the production of a man of taste, genius and reading. Although in the title page he simply styles himself "Esquire." It is understood from undoubted authority, that for many years he held the place of Attorney General, for the state of Pennsylvania, that he has since been promoted to a seat on the bench of the Supreme Court of the same state, from which honorable station he has lately been called by the illustrious Washington, to fill the office of Attorney General for the United States. The following work is said to have met with a flattering reception from the American public. The able practical manner in which the "Enquiry" has been conducted, has made a general and powerful impression; which promises eventually to produce the happiest effects on the penal codes of the several states.

The benevolent aim of its author is to ameliorate the condition, and to render useful to themselves and to society, the most unfortunate, the most wretched, and hitherto the most neglected class of human beings.

Such an object cannot assuredly be of less importance in this country, than it is beyond the Atlantic; and to expanded minds that deplore the frequent, perhaps the unnecessary destruction of human life by public executions; that observe with pleasure the principles of philosophy and humanity practically combining their influence to enlighten the ignorant, and to reform the vicious; who rejoice in every legislative improvement, that tends to diminish the misery, and to increase the aggregate of human happiness; every such mind will derive an exalted satisfaction from the perusal of the following work.

London, May, 1795.



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AN
I N Q U I R Y, &c.

I N T R O D U C T I O N.

THE general principles upon which penal laws ought to be founded appear to be fully settled. Montesquieu and Beccaria led the way in the discussion, and the philosophy of all Europe, roused by the boldness of their march, has since been deeply engaged on this interesting topic. Independent of the force of their reasoning, a remarkable coincidence of opinion, among the enlightened writers on this subject, seems to announce the justness of their conclusions: and the questions which still exist are rather questions of fact than of principle.

Among these principles some have obtained the force of axioms, and are no longer considered as the subjects either of doubt or demonstration. "*That the prevention of crimes is the sole end of punishment,*" is one of these: and it is another, "*That every punishment which is not absolutely necessary for that purpose is a cruel and tyrannical act.*" To these may be added a third, calculated to limit the first, which is, "*That every penalty should be proportioned to the offence.*"

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These principles, which serve to protect the rights of humanity and to prevent the abuses of government, are so important that they deserve a place among the *fundamental* laws of every free country. The enlightened patriots who composed the first national assembly in France, placed this check on the power of punishment, where it ought to be placed, among "the rights of a man and a citizen." They had long witnessed the ferocity of the criminal law, and they endeavoured to guard against it by declaring, in precise and definite terms, "That the law ought to establish such punishments *only* as are *strictly* and *evidently necessary*."* Few of the American constitutions are sufficiently express, though they are not silent, on this subject. That of New Hampshire declares, "That all penalties should be proportioned to the nature of the offence, and that a multitude of sanguinary punishments is impolitic and unjust, the true design of all punishments being to reform, and not to exterminate, mankind." The constitution of Vermont enjoins the introduction of hard labor as a punishment, in order to lessen the necessity for such as are capital; and that of Pennsylvania framed in 1776, directed the future legislature "to reform the penal laws—to make punishments less sanguinary, and, in some cases, more proportioned to the offences." But it was in Maryland alone that the *general* principle was asserted; and, in the enumeration of their rights, we find it declared, "That sanguinary punishments ought to be avoided as far as is consistent with the safety of the state †." The other constitutions which touch on this subject content themselves with generally declaring, "That cruel punishments ought not to be inflicted." But, does not this involve the same principle, and impli-

* S. VIII.

S. XIV.



citly prohibit every penalty which is not evidently necessary ?

One would think, that, in a nation jealous of its liberty, these important truths would never be overlooked ; and, that the infliction of death, the highest act of power that man exercises over man, would seldom be prescribed where its necessity was doubtful. But on no subject has government, in different parts of the world, discovered more indolence and inattention than in the construction or reform of the penal code. Legislators feel themselves elevated above the commission of crimes which the laws proscribe, and they have too little personal interest in a system of punishments to be critically exact in restraining its severity. The degraded class of men, who are the victims of the laws, are thrown at a distance which obscures their sufferings, and blunts the sensibility of the legislator. Hence sanguinary punishments, contrived in despotic and barbarous ages, have been continued when the progress of freedom, science, and morals renders them unnecessary and mischievous : and laws, the offspring of a corrupted monarchy, are fostered in the bosom of a youthful republic.

But it is pleasing to perceive that of late this indolence has not been able to resist the energies of truth. The voice of Reason and Humanity has not been raised in vain. It has already " forced its way to the thrones of princes," and the impression it has made on the governments of Europe is visible in the progressive melioration of their criminal codes. A spirit of reform has gone forth—the empire of prejudice and inhumanity is silently crumbling to pieces—and the progress of liberty, by unfettering the human mind, will hasten its destruction (*a.*)

(*a.*) See NOTE I.

Happily for Pennsylvania the examination and reform of the penal laws have been considered by the legislature as one of its most important duties. Much attention has been paid to this subject since the revolution. Capital punishments have, in several instances, been abolished; and, in others, the penalty has been better proportioned to the offence. This has been considered as the commencement of a more general reform; and, if the result of the experiment shall be found to be such as the friends of humanity wish, it has been generally expected, that the legislature would resume the benevolent task. Proceeding with that caution, which innovation on an ancient system demands, they have paused in their labours, but it is hoped they have not abandoned the work.

What success has attended the new system of punishments is, therefore, a question interesting to humanity. Some years have elapsed since its first establishment, and we now have data sufficient to calculate its effects. To aid this important enquiry, to review the crimes which are still capital in Pennsylvania, and to examine, whether the punishment of death be, in any case, necessary, is the object of the present attempt.

ON CAPITAL PUNISHMENTS.

IT being established, That the only object of human punishments is the prevention of crimes, it necessarily follows, that when a criminal is put to death, it is not to revenge the wrongs of society, or of any individual—"it is not to recall past time and to undo what is already done:" but merely to prevent the offender from repeating the crime, and to deter others from its commission, by the terror of the punishment. If, therefore, these two objects can be obtained by any penalty short of death,

to take away life, in such a case, seems to be an authorised act of power.

That the first of these may be accomplished by perpetual imprisonment, unless the unsettled state, the weakness, or poverty, of a government prevent it, admits of little dispute. It is not only as effectual as death, but is attended with these advantages, that reparation may sometimes be made to the party injured—that punishment may follow quick upon the heels of the offence, without violating the sentiments of humanity or religion,—and if, in a course of years, the offender becomes humbled and reformed, society, instead of losing, gains a citizen.

It is more difficult to determine what effects are produced on the mind by the *terror* of capital punishments; and, whether it be absolutely necessary to deter the wicked from the commission of atrocious crimes. This is the great problem, to the solution of which, all the facts I shall have occasion to mention hereafter, will be directed.

If capital punishments are abolished, their place must be supplied by solitary imprisonment, hard labor, or stripes: and it has been often urged, that the apprehension of these would be more terrible and impressivè than death. This may be the case where great inequality is established between the citizens, where the oppressions of the great drive the lower classes of society into penury and despair, where education is neglected, manners ferocious, and morals depraved. In such countries—and such there are in Europe—the prospect of death can be no restraint to the wretch whose life is of so little account, and who willingly risks it to better his condition. But in a nation where every man is, or may be a proprietor, where labor is bountifully rewarded, and existence is a blessing of which the poorest citizen feels the value, it cannot

be denied, that death is considered as the heaviest punishment the law can inflict. The impression it makes on the public mind is visible when a criminal is tried for his life. We see it in the general expectation—in the numbers that throng the place of trial—in the looks of the prisoner—in the anxious attention and long deliberation of the jury, and in the awful silence which prevails while the verdict is given in by their foreman. All these announce the inestimable value which is set on the life of a citizen. But the reverse of this takes place when imprisonment at hard labor is the punishment, and the minds of all present are free from the weight, which oppresses them during a trial of a capital charge. The dread of death is natural, universal, impressive: and destruction is an idea so simple that all can comprehend and estimate it: while the punishment of imprisonment and hard labor, secluded from common observation, and consisting of many parts, requires to be contemplated or felt, before its horrors can be realized.

But, while this truth is admitted in the abstract, it cannot be denied, that the terror of death is often so weakened by the hopes of impunity, that the less punishment seems a curb as strong as the greater. The prospect of escaping detection, and the hopes of an acquittal or pardon, blunt its operation, and defeat the expectations of the legislature. Experience proves that these hopes are wonderfully strong, and they often give birth to the most fatal rashness*. Through the violence

* Soon after the act to amend the penal laws was passed two persons were convicted, one of robbery the other of burglary, committed previous to it. These had the privilege of accepting the new punishment instead of the old: but they obstinately refused to pray the benefit of the act, and submitted to the sentence of death in expectation of a pardon. The hopes of one were realized; but the other was miserably disappointed. The unavailing regret he expressed when his death warrant was announced, and the horrors which seized him when he was led to execution, proved, at once, how terrible is the punishment of death, and how strong are the hopes of pardon!

of the temptation the offender overlooks the punishment, or sees it "in distant obscurity." Few, who contemplate the commission of a crime, deliberately count the cost.

These circumstances make it doubtful, whether capital punishments are beneficial in any cases, except in such *as exclude the hopes of pardon*. It is the universal opinion of the best writers on this subject, and many of them are among the most enlightened men of Europe, That the imagination is soon accustomed to over-look or despise the *degree* of the penalty, and that the *certainty* of it is the only effectual restraint. They contend, that capital punishments are prejudicial to society from the example of barbarity they furnish, and that they multiply crimes instead of preventing them. In support of this opinion, they appeal to the experience of all ages. They affirm, it has been proved, in many instances, that the *increase* of *punishment*, though it may suddenly check, does not, in the end, diminish the number of offenders (*b*). They appeal to the example of the Romans, who, during the most prosperous ages of the commonwealth, punished with death none but their slaves. They appeal to the East Indians, that mild and soft people, where the gentlest punishments are said to be a curb as effectual as the most bloody code in other countries (*c*). They appeal to the experience of modern Europe, to the feeble operation of the increased severity against robbers and deserters in France, and to the situation of England, where, amidst a multitude of sanguinary and atrocious laws, the number of crimes is greater than in any part of Europe. They cite the example of Russia†, where the intro-

(*b*) See NOTE II. (*c*) Montesq. B. 14. ch. 15. See NOTE III.

† Beccaria. Voltaire 4. Black. Com. p. 10.

duction of a *milder* system has promoted civilization, and been productive of the happiest effects (*d*): and they applaud the bolder policy of Leopold, which has actually lessened the number of crimes in Tuscany, by the *total* abolition of all capital punishments. This instructive fact is not only authenticated by discerning travellers, but is announced by the celebrated edict of the grand duke, issued so lately as 1786 (*e*). To these might be added the example of Sweden and Denmark: and indeed the more closely we examine the effects of the different criminal codes in Europe, the more proofs we shall find to confirm this great truth, *That the source of all human corruption lies in the impunity of the criminal, not in the moderation of punishment* (*f*).

The experience of America does not contradict that of Europe. Crimes, which are capital in one state, are punished more mildly in another; and, in the same state, offences which were formerly capital are not so at present. Such are those of horse-stealing, forgery, counterfeiting bills of credit or the coin, robbery, burglary, and some others: but, I cannot learn that these crimes have been better repressed by the punishment of death than by a milder penalty. Horse-stealing has always been treated like the other kinds of simple larceny in New England and in Pennsylvania: in all the states southward of Maryland, it is a capital crime. In the latter states the offence seems to be as common as in the former; and if the severity of the punishment has any beneficial effect, my enquiries have not been able to ascertain it. On the contrary, I have the best authority for say-

(*d*) See NOTE IV.

(*e*) See NOTE V.

(*f*) Montesq. B. 6. ch. 12. See NOTE VI.

ing, that, in Virginia, the effect is so feeble, that of all crimes this is the most frequent. New Jersey has made the experiment fairly. At first it was a felony of death: in 1769 the law was repealed: it was again revived in 1780; but after a few years experience, the legislature was obliged to listen once more to the voice of humanity and sound policy. The unwillingness of witnesses to prosecute, the facility with which juries acquitted, and the prospects of pardon, created hopes of impunity which invited and multiplied the offence(g).

In the case of forgery the balance is clearly on the side of the milder punishment. It is capital in New York, but it is not so in Pennsylvania; and, in the latter state, there have been fewer convicted of this crime than in the former. It is natural that it should be so; for the public sentiment revolting against this severity, very few have been executed: and the mischief became so apparent, that the late attorney general thought it his duty to present a memorial to the assembly, and to recommend a milder punishment than death.

Another fact deserves notice. Bank bills have been several times forged in the state of New York: but in Pennsylvania this crime has never been committed, although the act which made it capital at first, was repealed above seven years ago.

Counterfeiting the continental bills of credit and uttering them knowingly, were, as far as I can learn, much more frequent in this state, where they were capital, than in Connecticut where they were not. It appears, by the annexed table, that, in the space of two years, while such bills were current, there were eighteen persons tried for these

(g) See NOTE VII.

crimes, of whom eleven were convicted. This is nearly equal to all the other instances of forgery, not capital, that have occurred in the long term of fourteen years. Robbery, burglary, and the crime against nature were formerly punished with death in this state : since the year 1786, they have been as effectually restrained by the gentler penalties of imprisonment and hard labor.

The experience of Maryland, and, also, of Connecticut, where a similar system has been adopted with regard to the two first of these crimes, is said to establish the same fact (*b*).

Hereafter there may be occasion further to illustrate this part of the subject : yet, even these facts incline us to suspect, that, in most cases to which it is applied, the terror of death (lessened as it is by the hopes of impunity) is neither necessary nor useful. May not milder penalties, strictly enforced, have as great an effect ? Is there not sound wisdom in establishing a species of punishment in which the grade of criminality may be marked by a correspondent degree of severity ? May we not be allowed to suspect, that any *apparent* necessity results rather from the indolence and inattention of governments than from the nature of things ? and, may we not infer, that a legislature would be warranted to abolish this dreadful punishment in all cases (except in the *higher* degrees of treason and murder) and to make, in this country, a fair experiment in favor of the rights of human nature.

In no country can the experiment be made with so much safety, and such probability of success, as in the United States. In the old and corrupted governments of Europe, especially in the larger states, a reform in the criminal law has real difficulties to encounter. The multitude of offen-

(*b*) See NOTE VIII.

ders, the unequal state of society, the ignorance, poverty and wretchedness of the lower class of the people, corruption of morals, and habits and manners formed under sanguinary laws, make a sudden relaxation of punishment, in those countries, a dangerous experiment. But in America every thing invites to it : and strangers have expressed their surprise, that we should still retain the severe code of criminal law, which, during our connection with Britain, we copied from her. “ I am surprized, says a late traveller through America †, that the penalty of death is not abolished in this country, where morals are so pure, the means of living so abundant, and misery so rare, that there can be no need of such horrid pains to prevent the commission of crimes.” That these punishments ought to be greatly lessened, if not totally abolished, is the opinion of many of the most enlightened men in America : among these I may be allowed to mention the respectable names of Mr. Jefferson, Mr. Wythe and Mr. Pendleton of Virginia, who, as a committee of revision, in their report to the general assembly of that state, recommended the abolition of capital punishments in all cases but those of treason and murder : a proposal, which, unfortunately for the interests of humanity, was rejected in the legislature by a single vote.

But authorities may mislead and theory may be delusive. Government is an experimental science : and a series of well established facts in our state is the best source of rational induction for us. I shall, therefore, after taking an historical view of our criminal law, proceed to examine the practical effects of the new system of punishments (adopted in 1786, and improved by new regulations, intro-

† M. Brissot. p. 743.

duced in 1790—of those which are still capital—and to accompany them with such observations as a course of some years experience may suggest.

HISTORICAL VIEW OF THE CRIMINAL LAW OF PENNSYLVANIA.

IT was the policy of Great Britain to keep the laws of the Colonies in unison with those of the mother country. This principle extended not only to the regulation of property, but even to the criminal code. The royal charter to William Penn directs, That the laws of Pennsylvania “respecting felonies, should be the same with those of England, until altered by the acts of the future legislature,” who are enjoined to make these acts “as near, as conveniently may be, to those of England* :” and in order to prevent too great a departure, duplicates of all acts are directed to be transmitted, once in five years, for the royal approbation or dissent.

The natural tendency of this policy was to overwhelm an infant colony, thinly inhabited, with a mass of sanguinary punishments hardly endurable in an old, corrupted and populous country. But the founder of the province was a philosopher whose elevated mind rose above the errors and prejudices of his age, like a mountain, whose summit is enlightened by the first beams of the sun, while the plains are still covered with mists and darkness. He comprehended, at once, all the absurdity of such a system. In an age of religious

* This clause, introduced into several of the charters, was considered as imposing the English statutes. The Assembly of North Carolina, in their acts, passed 1715, declare, that, “From hence it is manifest that the laws of England are our laws as far as they are compatible with our way of living and trade.” A similar attempt, to introduce the British statutes, was more than once made in early times in Pennsylvania, but was always steadily opposed by the General Assembly.

intolerance

intolerance he destroyed every restraint upon the rights of conscience, and insured not merely *toleration*, but absolute *protection**, to every religion under heaven. He abolished the ancient oppression of forfeitures for self-murder, and deodands in all cases of homicide. He saw the wickedness of exterminating where it was possible to reform; and the folly of capital punishments in a country where he hoped to establish purity of morals and innocence of manners. As a philosopher he wished to extend the empire of reason and humanity; and, as a leader of a sect, he might recollect that the infliction of death, in cold blood, could hardly be justified by those who denied the lawfulness of defensive war. He hastened, therefore, to prevent the operation of the system which the charter imposed; and among the first cares of his administration, was that of forming a small, concise, but complete code of criminal law, fitted to the state of his new settlement: a code which is animated by the pure spirit of philanthropy, and, where we may discover those principles of penal law, the elucidation of which has given so much celebrity to the philosophy of modern times. The punishments prescribed in it were calculated to tie up the hands of the criminal, to reform, to repair the wrongs of the injured party, and to hold up an object of terror sufficient to check a people whose manners he endeavoured to fashion by provisions intewoven in the same system. Robbery, burglary, arson, rape, the crime against nature, forgery, levying war against the governor, conspiring his death, and other crimes, deemed so heinous in many countries, and for which so many thousands have been

* If any one shall abuse or deride another for his persuasion or practice in religion, he shall be punished as a disturber of the peace. Laws 1682. Ch. I.

executed in Britain, were declared to be no longer capital. Different degrees of imprisonment at hard labour, stripes, fines and forfeitures, were the whole compass of punishment inflicted on these offences. Murder, "wilful and premeditated," is the only crime for which the infliction of death is prescribed; and this is declared to be enacted in obedience "to the law of God," as though there had not been any political necessity even for this punishment apparent to the legislature. Yet even here the life of the citizen was guarded by a provision, that no man should be convicted but upon the testimony of two witnesses, and, by an humane practice, early introduced, of staying execution till the record of conviction had been laid before the executive, and full opportunity given to obtain a pardon of the offence or a mitigation of the punishment.

These laws were at first temporary, but being, at length, permanently enacted, they were transmitted to England, and were all, without exception, repealed by the queen in council. The rights of humanity, however, were not tamely given up: the same laws were immediately re-enacted, and they continued until the year 1718, and might have remained to this day had not high-handed measures driven our ancestors into an adoption of the sanguinary statutes of the mother country. During this long space of thirty-five years, it does not appear that the mildness of the laws invited offences, or that Pennsylvania was the theatre of more atrocious crimes than the other colonies. The judicial records of that day are lost: but, upon those of the legislative or executive departments and other public papers, no complaint of their inefficacy can be found; or any attempt to punish these crimes with death. On the contrary, as these laws were temporary, the
subject

subject was often before the legislature, and they were often re-enacted : which is a decisive proof that they were found adequate to their object.

Under this policy the province flourished : but during the boisterous administration of governor Gookin, a storm was gathering over it, which threatened to sweep away not only this system of laws, but, with it, the privileges of the people. The administration of government, in all its departments, had, from the first settlement of the province, been conducted under the solemnity of an attestation instead of an oath. The laws upon this subject were repealed in England, and, by an order of the queen in council, all officers and witnesses were obliged to take an oath, or, in lieu thereof, the affirmation allowed to Quakers in England by the statute of William III. But the assembly chose to legislate for themselves on this important subject ; and this, together with the refusal to adopt the English statutes in other cases, had given offence. The conduct of the Assembly, in their disputes with the governor, was misrepresented ; suspicions of disaffection were propagated ; the declining health of the proprietor left them without an advocate, and his necessities threatened them with a surrender of the government into the hands of the crown.

At this moment the Quakers were alarmed with the prospect of political annihilation. It was said, that the act of 1 George I, which prohibits an affirmation in cases of qualifications to office, or in criminal suits, extended to the colony and superseded the ancient laws. This construction, which was advocated by the governor, and tended to exclude the majority of the settlers from all offices, and even from the protection of the law, threw the whole province into confusion. The governor refused to administer the affirmation as a quali-

qualification for office; the judges refused to sit in criminal cases; the administration of justice was suspended, and two atrocious murderers remained in gaol three years without trial. The assembly were alarmed, but they resolutely and forcibly asserted the rights of the people: and Gookin was at length recalled*.

On the accession of sir William Keith a temporary calm took place: the criminals were convicted under the *old forms of proceeding*, and executed agreeably to their sentence. A representation and complaint of this was made to the crown; and the assembly were panic struck with the intelligence. They trembled for their privileges---they were weary of the contest which had so long agitated them, and impatient to obtain any regular administration of justice consistent with their fundamental rights.

They had been assured by the governor, that the best way to secure the favor of their sovereign was to copy the laws of the mother country,---“ the sum and result of the experience of ages.” The advice was pursued: a resolution to extend such of the British penal statutes, as suited the province, was suddenly entered into. An act for this purpose (containing a provision to secure the right of affirmation to such as conscientiously scrupled an oath) was drawn up by David Lloyd, the chief justice, and, together with a petition to the crown, was passed in a few days†.

So anxious were they to conform, that they not only surrendered their ancient system, but left it to the British Parliament to legislate for them, in

* 2 Votes of Assembly, 150, 188, 194-5, 200, et passim.

† Votes of Assembly, 224, 253-45, &c.

future, upon this subject*: and so humbled that they departed, in their petition, from their usual stile†, and directed their speaker to solicit the vestry and some members of the church of England to join in a similar address. The sacrifice was accepted, and the privilege of affirmation, so anxiously desired, was confirmed by the royal sanction.

Thus ended this humane experiment in legislation, and the same year, which saw it expire, put a period to the life of its benevolent author.

The royal approbation of this act was triumphantly announced by the governor, and such was the satisfaction of seeing its privileges secured, that the province did not regret the price that it paid.

By this act, which is the basis of our criminal law, the following offences were declared to be capital: high treason (including all those treasons which respect the coin) petit treason, murder, robbery, burglary, rape, sodomy, buggery, malicious maiming, manslaughter by stabbing, witchcraft and conjuration, arson‡, and every other felony (except larceny) on a second conviction. The statute of James I. respecting bastard children, was extended, in all its rigor, and the courts were authorized to award execution forthwith.

To this list, already too large, were added, at subsequent periods, counterfeiting and uttering counterfeit bills of credit, counterfeiting *any* current gold or silver coin, and the crime of arson

* Persons attainted, &c. are to suffer "as the laws of England now do or hereafter shall direct." Act, 1718. § VI.

† But the *principle* was saved by directing the speaker to sign it with an exception.

‡ I include arson in this list, because such was the construction of the act at the time, and long after its passing. One Hunt was actually executed under it. But, on a sounder construction it being held to be a felony within clergy, this benefit was expressly taken away in 1767.

was extended so as to include the burning of certain public buildings. All these crimes, except, *perhaps*, the impossible one of witchcraft, were capital at the revolution.

We perceive, by this detail, that the severity of our criminal law is an exotic plant, and not the native growth of Pennsylvania. It has been endured, but, I believe, has never been a favorite. The religious opinions of many of our citizens were in opposition to it: and, as soon as the principles of Beccaria were disseminated, they found a soil that was prepared to receive them. During our connection with Great Britain no reform was attempted: but, as soon as we separated from her, the public sentiment disclosed itself, and this benevolent undertaking was enjoined by the constitution. This was one of the first fruits of liberty, and confirms the remark of Montesquieu*, "That, as freedom advances, the severity of the penal law decreases."

In obedience to these injunctions, the assembly proceeded, in the year 1786, to introduce the punishment of hard labor; and the offences (formerly capital) on which its effects have been tried, are, the crime against nature, robbery and burglary.

We are now to enquire whether this punishment has been less efficacious in preventing these crimes than the punishment of death. To aid this enquiry, a table exhibiting a view of the number of persons convicted, acquitted and executed, since the year 1778 is annexed.

OF THE CRIME AGAINST NATURE.

THIS crime, to which there is so little temptation, that philosophers have affected to doubt its

* Book VI. ch. 9.

existence,

existence, is, in America, as rare as it is detestable. In a country where marriages take place so early, and the intercourse between the sexes is not difficult, there can be no reason for severe penalties to restrain this abuse. The wretch, who perpetrates it, must be in a state of mind which may occasion us to doubt whether he be *sui juris* at the time; or, whether he reflects on the punishment at all. The infamy of detection would, of itself, be a sufficient punishment to restrain any one who was not certain of being undiscovered: and what terror has any punishment to him who believes that his crime will never be known? The experiment that has been made, proves that the mildness of the punishment has not encreased the offence. *In the six years preceding the act, and while the crime was capital, there are on record two instances of it: in the same period since, there is but one.* It was impossible this last offender could be seduced by the mildness of the punishment, because at the time, and long after his arrest, he believed it to be a capital crime.

These facts prove, that to punish this crime with death would be an useless severity. They may teach us, like the capital punishments formerly inflicted on adultery and witchcraft, how dangerous it is rashly to adopt the Mosaical institutions. Laws might have been proper for a tribe of ardent barbarians wandering through the sands of Arabia, which are wholly unfit for an enlightened people of civilized and gentle manners.

ROBBERY AND BURGLARY.

THE salutary effects of this change in our laws are not so evident in the cases of robbery and burglary as in that of the crime against nature. On the contrary, a superficial inspection of the annex-

ed table would lead a careless observer to believe that it has tended to encourage these crimes instead of suppressing them. It is true, there were, at first, great defects in the plan, and still greater in the execution : and, for some time after its adoption, it had difficulties to struggle with which nothing but the native merit of its principle could have surmounted. A detail of these is necessary to enable us justly to appreciate this new system of punishment.

It must be remarked, that about three-fourths of the convictions of robbery and burglary, stated in the table, took place in Philadelphia. In a large city like this there is always a class of men, sometimes greater and sometimes less, who live by dishonest means, and considering theft as a regular vocation, pass through all the gradations of simple larceny into the higher departments of robbery and burglary. It so happened, that about the time of passing the act for amending the penal laws, there was accumulated in the goal of the city and county of Philadelphia a great number of persons who had been convicted of these and other infamous crimes, and were either pardoned by the mercy of the government, or had undergone the punishment (and some of them the *repeated* punishment) of the pillory and whipping-post. These wretches, hardened by the nature of the punishment they had sustained, shut up together in idleness, freely supplied with liquor, witnesses of each others debauchery, instructing the inexperienced in the arts of villainy, and mutually corrupting and corrupted by each other, were a melancholy proof of the inefficacy of our former laws, and they were well prepared to despise the new. In order to clear the goal, and accommodate it to the operation of the new system, these offenders were, from time
to

to time, discharged, and as soon as they were at liberty they returned to their old vocation.

It is a fact well known, that among all the convicts which first fell under the correction of the new law, scarce a new face appeared. Most of those who were convicted of the two offences in question, were sentenced to undergo an imprisonment of five, seven, or ten years; and had these sentences been strictly enforced, the benefit of the new system would have been apparent, and these crimes would have become rare.

Of all offenders these are the most incorrigible. Other offences are seldom repeated: but a person once devoted to any species of theft is seldom reclaimed by any terrors he has undergone or any mercy he has received. Reformation, though not impossible, must be the work of much time. A *strict execution* of the act was, therefore, essential to its success. But it unfortunately happened, that they were scarcely convicted before many of them were again loose upon the public. Pardons, so destructive to every mild system of penal laws, instead of being thought *dangerous*, were granted with a profusion as unaccountable as it was mischievous: and escapes, which ought to have been guarded against by the most vigilant care, were multiplied to an alarming degree. Sixty-eight different persons were convicted of these offences previous to the year 1790. Of these, twenty-nine escaped, and thirty have been pardoned, five executed for capital offences committed after their escape, and one killed in an affray. I doubt whether any one male offender served out the time to which he was condemned by the sentence of the court; and it is certain, that there is not, at this time, in goal a single person *under* a sentence pronounced previous to the year 1791. When to these abuses it is added, that the system itself was de-

fective in requiring the criminals to be employed abroad, which gave them opportunities for intoxication, and hardened them against shame; that their labor was not equal to that which it is the lot of poverty to endure, while their fare was much better; that there were no places for solitary confinement nor power to inflict it, and no real increase of punishment for a second offence; we may readily conjecture, that the operations of the system must have been not only impeded but perverted.

The defects of the system were corrected in 1790; the execution of it has been diligently attended to by the inspectors, and the prerogative of pardon, since it has resided in a single magistrate, is no longer weakly exercised.

Our calculations ought, therefore, to be made on the operations of the corrected system *during the two last years*. From an inspection of the table, it is evident these crimes have greatly decreased during that period. *The convictions in those two years are, upon an average, considerably less than those in any two years which precede them.*

But, under all the difficulties which, at first, it encountered, and without allowing for re-convictions which swell the account, let us examine what has been the general effect of the system, on these crimes, since it was first adopted. Referring, therefore, to the table, and excluding the year 1778, in order to make the time previous and subsequent to the act as equal as we can, the account will stand thus :

	<i>Before the act.</i>	<i>Since the act.</i>
Convicted,	81	104
Convicted partially,	9	10
Acquitted,	42	20
Total tried,	132	125
		From

From this statement it appears, *that more persons were tried for these offences, while they were capital, than since the punishment has been lessened: and if we allow for re-convictions the difference will be much greater.* It is true, the number of persons convicted in the former period, is less than that of those convicted in the latter: but in this (as well as in the number of partial acquittals) I see nothing but the humane struggles of the jury to save the offender from death. At that period the acquittals were more than *half* the number of the convictions: since the change in our laws, they do not amount to a *fourth*.—A proof how much the severity of a law tends to defeat its execution!

It is probable that the number of *these* crimes would have been less, had a greater difference been made between *their* punishment and that of simple larceny. Perhaps it might have a beneficial effect, if solitary confinement and coarse fare were a *necessary* part of the punishment. At present, it forms no part of the sentence on the criminal, but is inflicted, at the discretion of the inspectors, on “the more hardened offenders.” This is so indefinite a description, that this salutary rigour may be either capriciously inflicted or weakly withheld: and, as it is not the *certain* consequence of the offence, it can be no check upon the mind of the offender.

It might be sound policy to make a distinction between the punishment of those who commit these offences, armed with dangerous and mortal weapons, and of those who do not indicate such violent intentions. Such a distinction prevails in the laws of Connecticut, and also in those of Milan: and I understood from the nephew of the marquis Beccaria, while he was in America, that

beneficial effects had resulted from this discrimination.

These crimes are still punished with death in the first instance, when committed by any person, sentenced to hard labor, after an escape : and, also, on the second conviction, if the offender was pardoned for the first. A similar provision is found in the laws of Denmark, where robbery is not in the first instance a capital offence, and where (Mr. Howard assures us) night robberies are never heard of*.

It is evident from this examination, that the principle of the new system, properly modified, coincides with the public safety as much as with the dictates of humanity. The happy result of this experiment is an encouragement to proceed still further. I have already observed, that no offenders are so incorrigible as robbers and burglars, and on few crimes could the experiment have been made with so little prospect of success as on these I have been considering. Succeeding in this, there is little to apprehend from extending it to other crimes, which, though still capital, are not of the deepest dye.

COUNTERFEITING THE COIN.

BY the act of 1767, the counterfeiting " of any gold or silver coin, which is, or shall be passing, or in circulation," is made a felony of death without benefit of clergy. This not only comprehends all current *foreign* coins, but will embrace those of the United States as soon as they come into circulation.

* Howard on Pris. p. 76. Williams on the Northern Gov. i vol. p. 353.

This act is more penal than even the British statutes, for it is not a capital offence in England to counterfeit any *foreign* coin *at present* current in that kingdom*. If it be necessary to guard our coin by the terrors of an ignominious death, the act, to be consistent, ought to go further. False money made in another state or beyond seas, may be imported or uttered without incurring this punishment. The offence may, therefore, in substance, be committed, and yet the penalty of the law avoided.

But there does not appear to be any necessity for so violent a remedy. It is probable this crime will be neither frequent nor dangerous. The perfection of modern coins renders its commission difficult, and, to counterfeit them with success, requires not only time and industry, but a degree of skill which few possess, and which in this country will always ensure its possessor a respectable livelihood.

Most people are now a days sufficiently discerning to distinguish the genuine from false coin: and the banks, established in this and many of the principal cities in America, form a valuable check upon the circulation of base money. In these it is immediately detected; and, if a quantity appears to be abroad, information of it, and of the marks which distinguish it, is immediately transmitted to every part of the state by means of the public prints: Add to this, that the practice of making payments by checks or bank notes, now so general in this city (which is the usual mart for vending base money) tends very much to lessen the mischief. There is no longer any danger that false money will shock the public confidence, or embarrass the course of dealing between man and man. The monstrous

* Black. Com. 89.

monstrous folly of considering this offence as an usurpation of sovereignty, and therefore a species of high treason, is past; and it may now be safely ranked with other base frauds against individuals. The edict of the duke of Tuscany considers the coining of false money as grand larceny, and punishes it as such †. This crime is not capital in Massachusetts, nor in Connecticut, nor in Maryland, nor in North Carolina, as far as relates to foreign coin; and to every reflecting mind, which is not still enslaved by ancient errors, the punishment of death must appear to be far beyond the demerits of the offence. Is it wise; or is it just, to confound together dissimilar crimes, and to involve him who debases a piece of money in the same punishment with him who is guilty of deliberate murder?

There is no substantial reason for making this crime capital which does not equally apply to that of forgery. In the present state of society paper negotiations require as much protection as the coin. The latter offence, in general, is more easily committed; and a single act of forgery may be more injurious to the individual than many acts of counterfeiting the coin. Yet, we find, the paper of the banks, promissory notes and bills of exchange sufficiently safe under the mild system of our laws. It is true, various acts of assembly made it a felony of death to counterfeit and utter the continental bills of credit: but it has been already stated, that no beneficial consequences resulted from this severity.

Only three persons have been tried in Pennsylvania for counterfeiting the coin since the revolution, and of these two were acquitted. Positive proof of this crime is rarely to be obtained, and the

usual circumstances which attend its commission, as they amount to proof of an inferior offence, are seldom admitted by a jury to amount to any thing more.

From the experience we have had it is not probable, that many will become the victims of the law : but, while it remains in our statute book, it furnishes a precedent for involving, in the same punishment, crimes which are similar in their nature and effects. I suspect this offence was overlooked at the time the reform was made in our penal laws, otherwise it would hardly have been continued in the list of capital crimes.

Of the acts respecting the crime of counterfeiting bills of credit, loan-office certificates, &c. I shall take no notice, as the offence will scarcely be committed at this day, and the law will become obsolete of itself, if it be not repealed.

R A P E.

THE infliction of death for any crime supposes the incorrigibility of the criminal. But this offence, arising from the sudden abuse of a natural passion, and perpetrated in the phrenzy of desire, does not announce any irreclaimable corruption.

Female innocence has strong claims upon our protection, and a desire to avenge its wrongs is natural to a generous and manly mind. We consult this resentment, rather than our reason, when we punish this offence with such dreadful severity. The injury is certainly great : yet, it cannot be denied, that much of its atrocity resides in the imagination, and is the creature of opinion. Why else do we estimate the degree of the offence so much by the rank, the situation, and the character of the injured party ? Why does a jury frequently treat this charge so lightly as to acquit against positive and uncontradicted evidence ? Or why do
the

the laws consider the violation of a female slave of so little moment as to secure the offender from punishment by excluding the only witness who can prove it*? In most cases the violation of the natural right and the real injury to the individual is nearly the same: yet, those who justify the present severity are obliged to admit, "that it is a crime peculiarly liable to vary in the degree of its atrociousness, according to the circumstances of the case, and, therefore, *peculiarly* open to the divine prerogative of pardon †." The truth is, that in many instances, the common sense of mankind revolts against the extremity of the punishment, and pardons or acquittals are the necessary consequence. It is these pardons, it is these acquittals, which create the hopes of impunity and rob the law of all its terrors. It has been as strictly executed in Pennsylvania as in most countries: yet, of eighteen persons tried since the revolution for this crime, and *positively* charged, only five have been punished.

By a table of capital convictions in Scotland from 1768, to 1782 §, it appears, that only one person was convicted of this crime, and that he was pardoned (i).

William Penn considered imprisonment, stripes and hard labour as a punishment adequate to this crime, and sufficient to check the commission of it. The grand duke of Tuscany prescribes imprisonment at labor, varied as the circumstances may require ‡. The legislature of Vermont, so late as the year 1791, has followed the humane exam-

* Act for the gradual abolition of slavery. §. 7.

† Eden's principles, 238.

§ Howard on prisons, 485.

(i) See NOTE IX.

‡ Section 99.

ple, and in that state death is no longer inflicted on this offence.

If any one, mistaking the end of punishment, and more intent on vengeance than the prevention of the crime, deems this chastisement too light, a visit to the penitentiary house lately erected as part of the gaol of Philadelphia, will correct the opinion. When he looks into the narrow cells prepared for the more atrocious offenders—When he realizes what it is to subsist on coarse fare, to languish in the solitude of a prison, to wear out his tedious days and long nights in feverish anxiety; to be cut off from his family, from his friends, from society, from all that makes life dear to the heart; when he realizes this, he will no longer think the punishment inadequate to the offence.

A R S O N.

ARSON is the crime of slaves and children. Its motive is revenge, and, to a free mind, the pleasure of revenge is lost when its object is ignorant of the hand that inflicts the blow. Twelve persons have been tried for this offence in the last fourteen years: and of these, three were negro slaves, four were children, and two were vagrant beggars. The remaining three were acquitted under circumstances which made it probable the fire was accidental.

This offence may be committed so secretly, that it is seldom possible to collect proof sufficient on a charge that is capital. Other crimes are committed in the presence of witnesses, or are attended with circumstances which point out the criminal: but in arson there are no eye witnesses; the presumptive proof will seldom be *violent*, and confessions are only to be expected from the ignorance of slaves and children. These confessions (too

generally extorted by promises or threats) come before the jury in so questionable a shape, that they are often disregarded.

Hence the severity of the punishment, in this case, leads in a peculiar manner to impunity. The proof is so difficult that juries are justified in acquitting, and the objects convicted are such as the executive is prompt to pardon. Of five persons convicted of this crime only one was executed.— This was a *negro* woman in a *distant* county.

The crime of arson extends only to the wilful burning of a dwelling-house, certain public buildings, or a barn having hay or corn therein. Every other species of property may be maliciously destroyed by fire, without incurring the forfeiture of life. Hence, ships and other vessels in harbour or on the stocks, hay and grain in stack or barrack, magazines of arms and provisions, storehouses of every description, mills, theatres and distilleries, are not protected by these high terrors of the law: and to burn *them* is considered merely as a misdemeanor at common law. Here then is a fair opportunity for comparison. Has the milder punishment encouraged these malicious crimes; or, has the terror of death, hung up on high, deterred offenders from the crime of arson? The following fact will answer the question. *Since the revolution twelve persons have been indicted for the crime of arson; and only two for any other species of malicious burning!*

In New Hampshire and Massachusetts this crime is not capital if committed in the day time: nor in Connecticut, “if no prejudice or hazard to the life of any person happen therefrom.” To burn public vessels or magazines of provision, *in time of war*, being a species of treason, is indeed capital in that state: but it is not so if the same offence be committed in time of peace. I cannot learn

learn that these distinctions have any effect, or that the less offence is more frequent than the greater.

Upon the whole, it seems that solitude and hard labour will be a punishment, for this crime, as efficacious and more advantageous to the public, than death. The offender may be reformed and become a useful citizen, and he may be compelled to repair, by his estate or his labour, the injury he has done. This was formerly required in most cases, by the laws of William Penn; but, at present, is swallowed up by the legal maxim which merges the private in the public wrong: a maxim, invented by fiscal or feudal ingenuity, to prevent the claims of the injured party from interfering with the forfeiture to the crown and the escheat to the lord.

MALICIOUS MAYHEM, &c.

THIS offence is described in the words of the English statute, 22 & 23 Car. II. ch. 1. commonly called the *Coventry* act. The severity of this act, which goes considerably beyond all former statutes on the subject, was occasioned by a malicious assault made upon sir John Coventry, then one of the members of the house of commons. Laws thus made upon the spur of the occasion, and under the emotions of indignation, are seldom founded upon the permanent principles of justice or policy.

This act has remained a dead letter in Pennsylvania. No person has been prosecuted under it, nor can I learn that the crime has ever been committed. I attribute this to the state of manners, and by no means to the nature of the penalty. On the contrary, as no prosecution has called it into public notice, it is probable that very few people know that such an act exists.

New

New Hampshire, in legislating on this subject, has set us an example of justice and moderation. There the penalty is fine and imprisonment not exceeding seven years; and there, as well as in Pennsylvania, the offence is unknown. The same penalty is prescribed by the laws of the United States. Even in Georgia, where the attention of the legislature has been called to it so late as 1787, the punishment, for the first offence, is the pillory and fine not exceeding one hundred pounds, half of which goes to the injured party. In Virginia and North Carolina, though it be a felony, it is not ousted, as with us, of the benefit of clergy.

MAN-SLAUGHTER BY STABBING.

THE act of 1 Jac. I. usually called the statute of stabbing, by which this offence was ousted of clergy, was extended to the province by an express reference to it in the act of 1718. This statute, which was levelled against a *temporary* mischief prevalent in England at that day, in which so much ignorance of the common law is discovered; which is so rigorous in its *literal* meaning as to involve the cases of chance medley and innocent mistake; and so obscure and ill-drawn, that the judges have been divided on the meaning of almost every important word in it, ought never to have been made a permanent law of Pennsylvania. Its severity, however, has been so mitigated by judicial construction, that the soundest opinion now seems to be, "That the party indicted upon it ought not to be convicted, unless the fact, upon evidence, turns out to be murder at common law*." For this reason it has not been usual, for some years past, to indict

* Foster 301-2.

any person on this act in Pennsylvania; and, for the same reason, it ought not to remain among our laws. It is useless when rightly explained: it may be the instrument of mischief when it is perverted or misunderstood.

M U R D E R.

IT has been a question which has divided the philosophers of Europe, whether it be lawful, in *any* case, to take away the life of a criminal: and the negative has been advanced and ingeniously supported in our own country*. Great names are arranged on the different sides of this question: but, waving useless refinement, it seems to resolve itself into that which we are considering, *viz.* whether it be *necessary* to the peace, order, and happiness of society.

Murder, in its highest degree, has generally been punished with death†, and it is for deliberate assassination, if in any case, that this punishment will be justifiable and useful. Existence is the first blessing of Heaven, because all others depend upon it. Its protection is the great object of civil society, and governments are bound to adopt every measure which is in any degree essential to its preservation. The life of the deliberate assassin can be of little worth to society, and it were better that ten such atrocious criminals should suffer the penalty of the present system, than that one worthy citizen should perish by its abolition. The crime imports extreme depravity, and admits of no reparation.

“ But why should capital punishments have a more powerful effect on these than on other offen-

* “ Observations on the injustice and impolicy of punishing murder with death,” by Dr. Rush.

† See NOTE X.

ders?" I have already observed, that the fear of death is universal and impressive: and that its beneficial effects are defeated principally by the hopes of impunity.

We have had no experience what its effect will be when it is applied to a *single* crime of such a nature as to exclude the hopes of pardon. In such a case, where an execution would be as rare as it is dreadful, the wholesome terror of the law would be wonderfully increased: and this is one reason why a less punishment should be adopted for other crimes.

If we seek a punishment capable of impressing a strong and lasting terror, we shall find it in an execution *rarely* occurring, *solemnly* conducted (*k*) and inflicted in a case, where the feelings of mankind *acquiesce in its justice* and do not revolt at its severity.

But while I contend that this is the most powerful curb of human governments, I do not affirm that it is *absolutely* necessary, or that a milder one will be insufficient. It is possible that the further diffusion of knowledge and melioration of manners, may render capital punishments unnecessary in all cases: but, until we have had more experience, it is safest to tread with caution on such delicate ground, and to proceed step by step in so great a work. A few years experience is often of more real use than all the theory and rhetoric in the world. One thing, however, is clear. Whatever be the punishment inflicted on the higher degrees of murder, it ought to be *widely* different from that of every other crime. If not different in its *nature*, at least let there be some circumstance in it calculated to strike the imagination, to impress a

(*k*) See NOTE XI.

respect for life, and to remove the temptation which the villain otherwise has to prevent the discovery of a less crime by the commission of a greater (1).

But while I speak thus of deliberate assassination, there are other kinds of murder to which these observations do not apply : and in which, as the killing is in a great measure the result of *accident*, it is impossible the severity of the punishment can have any effect. The laws seem, in such cases, to punish the act more than the intention : and, because society has unfortunately lost one citizen, the executioner is suffered to deprive it of another.

In common understanding the crime of murder includes the circumstance of premeditation. In the laws of William Penn, the technical phrase, *malice aforethought*, was avoided ; and “ wilful and *premeditated* murder ” is the crime which was declared to be capital. Yet murder, in judicial construction, is a term so broad and comprehensive in its meaning as to embrace many acts of homicide, where the killing is neither wilful nor premeditated, “ *A. shooteth at the poultry of B. and, by accident, killeth a man ; if his intention was to steal the poultry it will be murder : but if done wantonly it will be barely man-slaughter.* ” Again, “ A parker found a boy stealing wood in his master’s ground : he bound him to his horse’s tail and beat him. The horse took fright, run away and killed the boy. This was held to be murder *.” In the latter case there was no design to kill ; in the former not the least intention to do any bodily harm.

I am sensible how delicate a step it is to break in upon the definition of crimes formed by the

(1) NOTE XII.

* Foster. 259, 292.

accumulated care of ages ; but, when we consider how different, in their degree of guilt, these offences are from the horrid crime of deliberate assassination, it is difficult to suppress a wish, that some distinctions were made in favour of homicides which do not announce extreme depravity. The defect may be, in a degree, supplied by the prerogative of pardon : yet it shocks the vulgar opinion and lessens the horror of the crime whenever a *murderer* is pardoned. It has been said, "Ye shall take no satisfaction for the life of the murderer:" yet it is often necessary, as the law stands, to interpose the prerogative of mercy. Even in England, where restraints are laid upon its exercise in cases of murder, it appears, by tables* already referred to, that of eighty-one sentenced to die for this crime, seven were pardoned ; in Scotland seven out of twenty ; and in Pennsylvania about one-fourth of the whole number convicted. *Not one of these, thus pardoned, has ever been prosecuted, to my knowledge, for any other crime.*

In the report of the committee of revision to the General Assembly of Virginia, a reform is suggested so far as relates to homicide accidentally happening in consequence of a felonious or unlawful act : and it is proposed to be enacted, "That, in future, no such case shall be deemed man-slaughter unless man-slaughter were intended, nor murder unless murder were intended."

Though *assassination* has been rare in Pennsylvania, it cannot be concealed that *homicides* have been very frequent. It appears by the table annexed, that, in the last fourteen years, there have been tried for murder and manslaughter no less than one hundred persons, of whom one half were convicted, and *thirty-four* of these were for mur-

* See Jansen's Table in How. Lazar. p. 482-5.

der. In the same space of time there were but *twenty* convicted of this latter crime in Scotland. Even in the city of London, nearly twice as populous as this state, there were but *nineteen* persons executed for murder from 1771 to 1783, a space of twelve years*. In fourteen years *twenty-six* have been executed in Pennsylvania.

There is one species of murder which deserves attention. It is that of bastard children. The horrid severity of the statute of James I. introduced here, had long been mitigated by a humane *practice* of requiring some proof that the child was born alive. This practical construction is now legally authorized, and it is necessary to give some "*probable presumptive proof* of that fact, before the strained presumption that the child, whose death is concealed, was therefore murdered by its mother, shall be sufficient to convict the party indicted†."

But does it necessarily follow that a child, which *is* born alive, must be destroyed merely because its death is concealed? May not the child perish from want of care, or of skill, in so critical a moment? A helpless woman, in a situation so novel and so alarming—alone, and, perhaps, exhausted by her sufferings, may she not be the involuntary cause of her infant's death? and, if she afterwards consults a natural impulse to conceal her shame, is not the penalty beyond the demerit of the offence? These reflections naturally arise in the hearts of jurymen; they regard these unfortunate creatures with compassionate eyes, and I have never known them convict unless there were marks of violence, or some circumstances that would amount to proof of murder at common law. The

* Howard, p. 484-5.

† Act to reform the penal laws, § VI.

punishment is ever before their eyes, and they tremble at the consequences of an irretrievable mistake. The presumptions that the child was born alive have been, not only *probable* but *violent*, and yet the act has not been enforced. *There have been fifteen women tried for child-murder since the year 1778 ; three only convicted, and, of these, two were pardoned.* Where a positive law is so feebly enforced, there is reason to suspect that it is fundamentally wrong. The error of *this* act is apparent. Proof of a crime is that which satisfies our minds of the truth of the charge. If it does not produce a *belief* of the fact laid in the indictment it is not *proof* of it ; and this belief is neither in our power nor that of the law. It is absurd, therefore, to say, that this or that circumstance shall be *proof of the murder*. To make the concealment a capital crime is one thing : but, to say, that when the concealment is proved, the jury must, at all events, believe the murder to be committed, is a very different one.

In *Denmark*, women guilty of child-murder are no longer punished with death ; but are condemned to work in spin-houses for life, and to be whipped annually, on the day when, and the spot where the crime was committed. “ This mode of punishment, Mr. Howard assures us*, is dreaded more than death, and since it has been adopted has greatly prevented the frequency of the crime.”

An attempt was made to introduce a similar alteration in the laws of *Sweden*. It was recommended by Gustavus III. in his speech at the opening of the Diet of 1786. But this innovation was warmly opposed by the Clergy : and the patriots to whose consideration it was referred were unani-

* Howard on Prisons, p. 74.

mous in advising the representatives of the nation to continue the punishment of death*.

There is a provision in the laws of New Hampshire, which is founded in good sense, and which, while this offence remains capital, it is desirable could be introduced here. There, the *concealment* is treated as a crime punishable by fine, imprisonment, or public infamy, according to the circumstances of the case; while the proof of the *murder* remains as at common law. If, as is usually done, the indictment charges both crimes, the jury may acquit of the murder and find the prisoner guilty of the less offence.

MAN-SLAUGHTER.

THOUGH man-slaughter is not, in common acceptation, a capital crime, I mention it for the sake of making a single observation respecting its punishment.

Man-slaughter, as explained in our law-books, is exceedingly comprehensive in its nature. While its deepest shade partakes of the hue of murder, its lightest is faintly ringed with the feeble colours of carelessness and inadvertence. The punishment ought, therefore, to be such as might be varied according to the circumstances of the case: or, the different degrees of the crime should be ascertained and marked with a corresponding penalty. The former is the case in all the New England states, and the court may inflict an *infamous* punishment, or fine or imprisonment, or all or either of these as the degree of guilt requires. This was formerly the law in Pennsylvania; but now *every* person convicted of man-slaughter is sentenced to

* See Journey thro' Sweden translated by Radcliffe. Catteau's View of Swed. p. 159.

be burnt in the hand, to find security for his good behaviour *during life*, and to be fined and imprisoned: and for the second offence to be hanged.

Beneficial effects resulted from an act of assembly, passed in the year 1780, which authorized the attorney general, with the leave of the court, to proceed against any person charged with *treason*, as far as a misdemeanor only. Upon this principle, might not the public prosecutor be impowered to wave the felony in the lower species of manslaughter, and to indict the defendant for an unlawful homicide, punishable as a misdemeanor at common law?

PETIT TREASON.

THIS crime, which consists in a wife's killing her husband, or a servant his or her master, is punished differently from the other species of murder. A man convicted of it is to be drawn and hanged, and a woman to be drawn and *burnt*. Is not this distinction unjust, and this mode of inflicting death, handed down from ferocious ages, injurious to society from its apparent*, if not real barbarity?

In many of the states, as well as by the laws of congress, it is expressly enacted, That death shall *always* be inflicted by hanging the offender by the neck. We have no such act in Pennsylvania.

The distinction between petit treason and other kinds of murder is abolished by the laws of Massachusetts. Neither the enormity of its guilt, nor the supposed allegiance of the party, require a distinction more than the crime of parricide, which is punished as simple murder.

* In practice, it is usual to strangle the woman before her body is committed to the flames. See NOTE II.

HIGH TREASON.

HIGH TREASON, when properly limited, has generally been considered as the highest crime, and as involving in it the guilt of murder. In its true meaning it is an attack upon the sovereignty and existence of the nation.

By the acts of congress, and of several of the states*, it is properly confined to the levying war and adhering to enemies, and is described in the words of the statute of Edward III. words, whose precise extent has been settled by the judicial construction of more than four centuries. In Pennsylvania the description of this crime is more diffuse: and the act of 1782 is sufficiently severe, which makes it high treason to set up a notice inviting the people to meet for the purpose of erecting a new and independent government within the bounds of the state, or even to attend at any meeting for such a purpose.

CONCLUSION.

IT is from the ignorance, wretchedness or corrupted manners of a people that crimes proceed. In a country where these do not prevail moderate punishments, strictly enforced, will be a curb as effectual as the greatest severity.

A mitigation of punishment ought, therefore, to be accompanied, as far as possible, by a *diffusion of knowledge* and a *strict execution of the laws*. The former not only contributes to enlighten, but to meliorate the manners and improve the happiness of a people.

The

* In New Hampshire "to conspire to levy war" is high treason: This, if applied to the *constructive* levying of war, outdoes the severity of the British Government.

The celebrated *Beccaria* is of opinion, that no government has a right to punish its subjects, unless it has previously taken care to instruct them in the knowledge of the laws and the duties of public and private life. The strong mind of *William Penn* grasped at both these objects, and provisions to secure them were interwoven with his system of punishments. The laws enjoined all parents and guardians to instruct the children under their care, so as to enable them to write and read the scriptures by the time they attained to twelve years of age: and directed, that a copy of the laws (at that time few, simple and concise) should be used as a school book*. Similar provisions were introduced into the laws of Connecticut, and the select men are directed to see that "none suffer so much barbarism in their families as to want such learning and instruction." The children were to be "taught the laws against capital offences†," as those at Rome were accustomed to commit the twelve tables to memory. These were regulations in the pure spirit of a republic, which, considering the youth as the property of the state, does not permit a parent to bring up his children in ignorance and vice.

The policy of the Eastern states, in the establishment of public schools, aided by the convenient size and *incorporation* of their townships, deserves attention and imitation. It is, doubtless, in a great measure, owing to the diffusion of knowledge which these produce, that executions have been so rare in New England; and, for the same reason, they are comparatively few in Scot-

* Laws 1682. ch. 60, 112.

† Laws Conn. p. 20.

land.* Early education prevents more crimes than the severity of the criminal code.

The constitution of Pennsylvania contemplates this great object and directs, That "Schools shall be established, by law, throughout this state." Although there are real difficulties which oppose themselves to the *perfect* execution of the plan, yet, the advantages of it are so manifest that an enlightened legislator will, no doubt, cheerfully encounter, and, in the end, be able to surmount them.

Secondly—Laws which prescribe hard labor as a punishment should be strictly executed (*m*). The criminals ought, as far as possible, to be collected in one place, easily accessible to those who have the inspection of it. When they are together their management will be less expensive, more systematic and beneficial. Their treatment ought to be such as to make their confinement an *actual* punishment, and the remembrance of it a terror in future. The labor, in most cases, should be real *hard* labor; the food, though wholesome, should be *coarse*; the confinement sufficiently *long* to break down a disposition to vice; and the salutary rigor of *perfect solitude*, *invariably* inflicted on the greater offenders. Escapes should be industriously guarded against, pardons should be rarely, *very rarely* granted, and the punishment of those who are guilty of a second offence should be sufficiently severe.

The reformation of offenders is declared to be one of the objects of the legislature in reducing

* Scotland is nearly twice as populous as London; yet, by the tables referred to already, it appears, that about *thirty* criminals are executed, yearly, in London, while not quite *four* is the yearly average in Scotland. The difference between those *capitally convicted*, in two places, is much greater. How. p. 9, 483-5.

(*m*) See NOTE XIII.

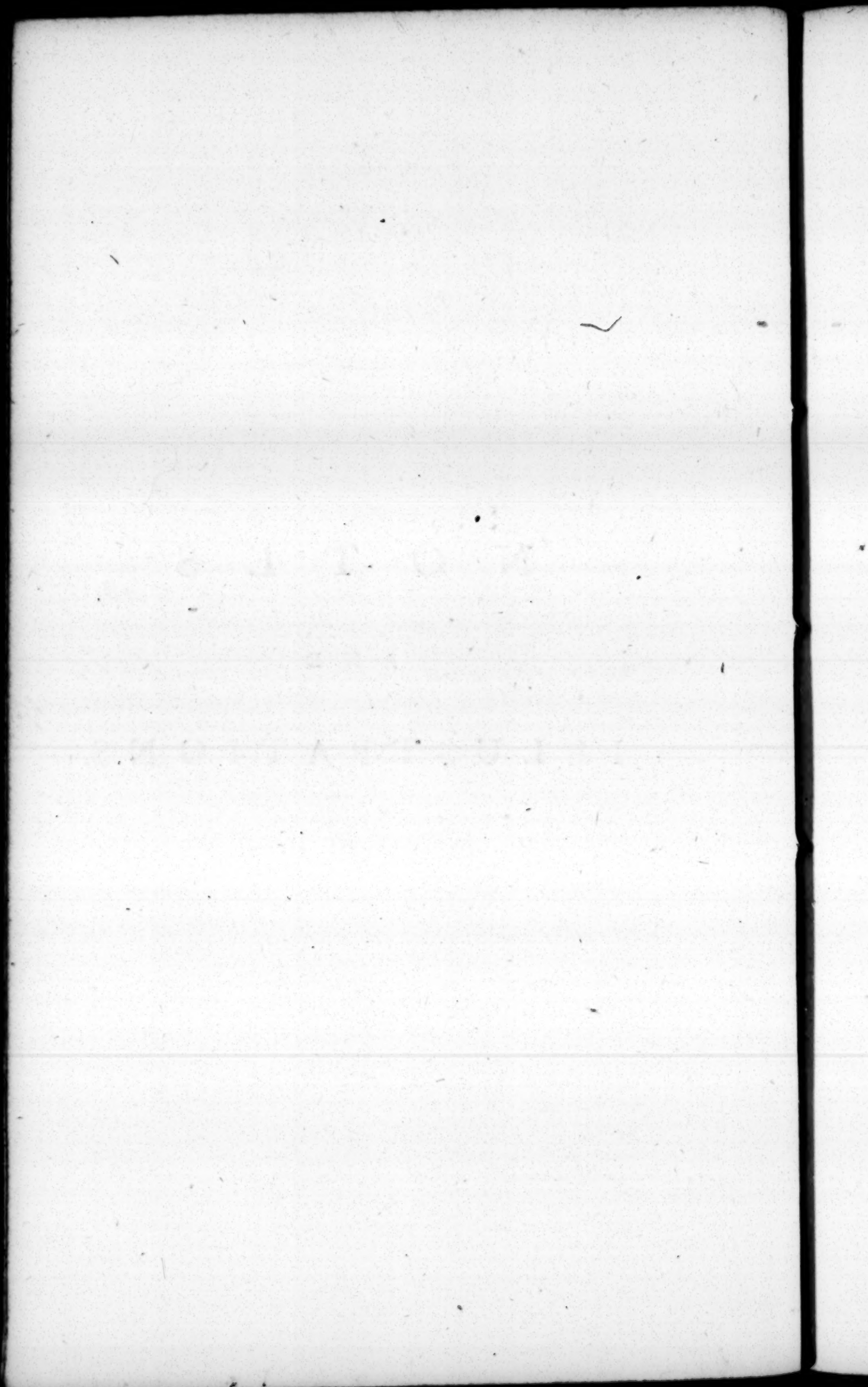
the punishment: but time, and in some cases, *much time*, must be allowed for this. It is easy to counterfeit contrition; but it is impossible to have faith in the sudden conversion of an old offender.

On these hints I mean not to enlarge, but they point to objects of great importance, which may deserve attention whenever a further reform is attempted.

The conclusion to which we are led by this enquiry seems to be, that in all cases (except those of high treason and murder) the punishment of death may be safely abolished, and milder penalties advantageously introduced. Such a system of punishments, aided and enforced in the manner I have mentioned, will not only have an auspicious influence on the character, morals, and happiness of the people, but may hasten the period, when, in the progress of civilization, the punishment of death shall cease to be necessary; and the legislature of Pennsylvania, putting the key-stone to the arch, may triumph in the *completion* of their benevolent work (*n*).

(*n*) See NOTE XIV.

N O T E S
A N D
I L L U S T R A T I O N S.



NOTES

AND

ILLUSTRATIONS.

NOTE I. Page 5.

IT was a favourite opinion of Dr. Jebb, "*That no effort is lost,*" and the success which has attended these endeavours to moderate the rigor of the criminal law, tends to confirm it. A slight review of the effects which the dissemination of these principles has had upon the governments of Europe will not be foreign to the object of this work, and must be consolatory to the friends of humanity.

Forty years ago the execrable practice of *torture* was general on the continent of Europe, and it was considered to be as necessary in the administration of justice as capital punishments are at present. Against this cruel institution all the powers of reason and ridicule were exerted: and the folly as well as the wickedness of it has been so happily exposed, that it has either been wholly suppressed, or has become so disreputable as seldom to be exercised. The king of *Prussia* set the example of abolishing it in Germany, and the duke of *Tuscany* in Italy; and the example was soon followed in Saxony and in Poland. It was suppressed throughout all *Russia* in 1768, though not without some opposition from the prejudices of the people. In *Geneva* it has not been used since the year 1756; and it was totally abolished in *Sweden* in 1773. Maria Theresa tacitly suppressed, and the late emperor Joseph formally prohibited it in the *Austrian* dominions. Louis XVI. about the same time restricted its exercise in *France*. The revolution

has utterly abolished it in that country as well as in *Avignon*, where it was exercised with so much severity that the goaler there informed Mr. *Howard*, in 1786, that he had seen drops of blood mixed with the sweat on the breasts of some who had suffered the torture: Even in *Spain* the practice, though not formally abolished, is generally reprobated, and in some of the provinces is no longer used. The *Chevalier de Bourgoanne* informs us, that a few years ago an ecclesiastic named *Castro*, undertook a formal apology for it; but that his book was received with universal indignation and was fully refuted by a gentleman of the law, who, in fact, only expressed the moderate sentiments of the first tribunals of the kingdom, and of the reasonable part of the nation.

Those, whose imaginations have realized the scenes which were formerly exhibited in a *torture chamber*, will consider the destruction of this monster as no inconsiderable cause of triumph. See *Bourg. Trav.* vol. 1. 286-7. *Howard on Pris.* 154, &c. *Lazarettos.* 66. 53. *Coxe's Trav.* 2 83. 392. 4. *Biblioth. Philos.* 205.

Though I have selected this striking instance, it is but a small part of the effects produced by this diffusion of light and truth.

To *this* is to be attributed the *general* reformation in the civil and criminal code of *Russia*. The celebrated "Instructions" of the Empress, written with her *own* hand, and deposited with so much care in the gilded vase at *Peterburg*—What are they, but the principles scattered through the writings of the philosophers of Europe, and often expressed in their *very words*? It was the same cause which produced the reformation of the criminal law at *Vienna* in 1785. "The Court (says baron *Reisbach* speaking of the *Codex Theresianus*) became ashamed, at the time when all Europe was making an outcry about humanity, the abolition of capital punishments, &c. of a statute book which had nothing in it but halters, gibbets, and swords"—and a reform was immediately begun.

The amelioration introduced into the laws of *Sweden* by *Gustavus III.* begins to be generally known.—We now perceive in that country "the character of a government which listens to the voice of humanity;" and it is easy to trace the source of this reform to those philosophical writings whose maxims were so strongly impressed
on

on his mind, that he did not forget them in the last moments of his life. As to *Tuscany*, it is acknowledged, that the abolition of capital punishments, and indeed the whole system of *Leopold*, was introduced with the design of putting the principles of *Beccaria* to the test of experiment.

In *Spain*, the triumphs of reason have not been wanting. Various steps have been taken under the auspices of *Count d' Aranda*, to narrow the jurisdiction and humanize the proceedings of the inquisition, and with such success, that some years ago there was an expectation "that the moment was at hand when this hydra, which philosophy had condemned long before, was to be destroyed." — Attempts were also made in the year 1783 to reform the criminal law of the other tribunals of the kingdom. The council of Castile proposed this, and a committee was appointed to carry the proposal into effect. But what has been the result I have not been able to learn.

England contenting herself with the superior wisdom, humanity, and justice of her laws in all respects but one, and too fond of "*the ancient order of things*," has alone remained stationary. The nation indeed is fully sensible of the evil which attends a multitude of sanguinary laws, and the *government* itself begins to be alarmed with the magnitude of the mischief. Judge Blackstone was active in prosecuting a reform, and lord Ashburton, it is said, was prevented by his death from bringing forward in parliament a plan for that purpose. A disposition to establish penitentiary houses has been discovered, and this rational expedient will probably be adopted when the Botany Bay scheme has been sufficiently tried.

The fermentation of the public mind in Europe, excited by greater objects, will prevent for a while any attention to this subordinate subject: but a reform in the government will in the end hasten that which is so much wanted in the criminal law. It is impossible that error can long resist the gentle, but continued impression of reason. The stroke of truth on public prejudice will be finally irresistible. It resembles that of a grain of sand falling on unannealed glass. Feeble as it seems to be, and slow and invisible as its operations are, no human power can prevent its effects, or preserve from destruction the object on which it falls. See Reissbach's Trav. i vol. p. 106. Bourg. i vol. 320. i. 186. Jebb on Prisons. Parl. Regist. vol. 18. p. 521.

NOTE II. Page 9.

[*An increase of punishment may suddenly check, but does not in the end diminish the number of offenders.*].—This principle is well illustrated by Montesquieu. To the facts adduced by him in support of it, the following may be added. In 1752, the British parliament passed an act for the better preventing the horrid crime of murder; by which, in order “*to add further terror to the punishment of death,*” it was directed that the body of the criminal should be delivered at Surgeons Hall, to be dissected and anatomized. This expedient, it is said, carried some terror with it at first, but we are assured, that this prejudice is now pretty well worn off. 1 vol. Wendeb. View, p. 78. This is confirmed by sir S. T. Jansen, who on comparing the annual average of convictions for 23 years previous and subsequent to that statute, found that the number of murders had not at all decreased. See his Table in Howard’s Lazar.

I am sorry to perceive that this useless, and perhaps pernicious, expedient has been introduced into the laws of the United States. An anatomical professor might have found reasons for its adoption, but the single object of the legislature was or ought to have been to prevent the crime. See Debates Cong. 7 April 1790. Not wholly foreign to this subject is the following striking passage in the Rights of Man: “It may, perhaps be said, that it signifies nothing to a man what is done to him after his death: but it signifies much to the living. It either tortures their feelings or hardens their hearts; and in either case it teaches them how to punish when power falls into their hands. Lay then the axe to the root, and teach governments humanity. It is their sanguinary punishments which corrupt mankind.” Rights of Man, 1 Part, p. 33.

NOTE

NOTE III. Page 9.

Facts from which principles are to be deduced ought to be well established. I am therefore obliged to observe that Montesquieu appears to have taken up that alluded to in the text, without sufficiently examining into its truth. The passage in the Spirit of Laws is thus: "The people of *India* are mild, tender, and compassionate. Hence their legislators repose great confidence in them. They have established very few punishments, and these are not severe or rigorously executed." This is founded on the authority of Le P. Bouchuel in his collection of edifying letters. A similar account is given by other European writers. The author of "Travels into Europe, Asia, and Africa," published in 1782, says, "The Hindoos are naturally the most inoffensive of mortals. There is a wonderful mildness in their manners, and also in their laws, by which the murder of a human creature and of a cow, (one of the sacred animals) are the only crimes which are punished with death." 1 vol. p. 332. These accounts are very different from those of the ancients, who represent the punishment of crimes in *India* as extremely rigorous: and since the Bramins have been prevailed upon by the address of Mr. Hastings, to communicate the Hindoo code to the world, we find that the ancients were right in their representations. There is a profusion of capital punishments prescribed in that code, and the cruel manner of inflicting them bears the stamp of remote and barbarous ages. This difference is in some measure reconciled by Mr. Halhed, the translator of the Hindoo code, in his preface to that work. Speaking of the chapter on theft, his words are, "This part of the compilation exhibits a variety of crimes punished by various modes of capital retribution, contrary to the general opinion adopted in Europe, that the Gentoo administration was wonderfully mild and averse to the deprivation of life. One cause for this opinion might be, that since the Tartar Emperors became absolute in India, the Hindoos, (like the Jews in captivity) though in some respects permitted to *live* by their own rules, have, for reasons of government, been in most cases prohibited from *dying* by them." p. 62. Be this

as it may, little can be inferred from the example of so peculiar a people, who are more governed by manners and religion, than by laws; otherwise it might be observed, that those of the superior cast or tribe are expressly exempted from *capital*, though they are subjected to other punishments: and there is no good ground to believe that this exemption ever corrupted the heart or tempted to the commission of crimes. See Spirit of Laws. B. 14. ch. 15. Raynal vol. 1. Sketches Hist. Hindost. 300. 1. Hindoo Code. 1777. passim. Roberts. Ind. 263.

In *China*, where the population is computed at 60 millions, a strict administration of justice is said to supersede the necessity of many capital punishments. We are told that no crimes are punished with death, except treason and murder; and that in this extensive country, not more than 10 persons are executed in a year. Sullivan's Philos. Rhaps. 156. There is reason to believe that the laws of China are at once mild and efficient: But the accounts we have of that people are imperfect and contradictory. See on this subject Montesq. B. 19. ch. 17. B. 6. ch. 9. Duhalde's Hist. vol. 1. Encyclop. art. China.

N O T E IV. Page 10.

Blackstone in his Commentaries, Montesquieu, and others, cite with approbation the conduct of the empress Elizabeth, who upon her accession to the throne of *Russia*, in 1741, made a vow that no one should be put to death during her reign. But as there were no fixed and ascertained punishments substituted in the room of death, and as that defect was often supplied in that arbitrary government by the infliction of capricious and cruel tortures, it seems rather to have been a weak affectation of clemency, than a beneficial reform: and it was not successful in the prevention of crimes. See note X. The present empress proceeded with more wisdom. In 1768 she convoked an assembly of deputies from all parts of the empire, and laying before them her "Instructions," which contain an epitome of the principles advanced by the best writers on this subject, has by their assistance given to the nation a complete code of civil and criminal laws, the first part published in 1775, the latter in 1780. By these the penalty of death is abolished in all cases but that

that of treason: and definite and certain punishments are prescribed for every offence. Some of these are of such a nature, that humanity has gained little by the change: but *in general* the beneficial effects of the new system are very evident. That empire has of late been an object of attention to intelligent travellers, and we have as much authentic information of the internal state of *Russia* as of other European countries. Upon an attentive examination of their accounts, I do not discover, that the suppression of capital punishments has in any degree tended to encourage crimes, on the contrary, that country is constantly increasing in civilization and happiness, and the people are as secure in their persons and property, as they were under the bloody code which formerly prevailed. There have been no complaints of the inefficacy of the new regulations, as there were of those under the administration of Elizabeth, and before the establishment of the present system.

The severity with which the punishment of the knout is sometimes inflicted on atrocious criminals, maybe thought necessary on account of the remaining barbarism of a part of the people—or may arise from a defective execution of the laws on smaller offences, and particularly from what Mr. Howard tells us, p. 86. that in *Russia* there is little or no attention paid to the *reformation* of prisoners. Yet when we consider that under all these defects,—in so extensive a country—where the population is computed at 22 millions of people, and a considerable part of these still rude—the government is able to repress crimes (except in a single case) without the *terror of death*, we must admit that it is seldom *necessary*, and ought rarely to be inflicted. See 4 Blacks. 18. 1 Coxe's Trav. 521. 2 ditto. 77-93. 217. William's View, &c. 2 vol. 255.

N O T E V. Page 10.

As the example of *Tuscany* appears to be the most instructive one I meet with, and is generally cited as *conclusive* in support of these principles—I have endeavoured to ascertain the fact with as much accuracy as possible.

General Lee, who viewed the different governments of Europe with the eye of a philosopher, and whose residence at Vienna furnished him with the best means of

information, gives us this account : " When the present grand duke acceded to the ducal throne, he found in Tuscany the most abandoned people of all Italy, filled with robbers and assassins. Every where for a series of years previous to the government of this excellent prince were seen gallows, wheels, and tortures of every kind ; and the robberies and murders were not at all less frequent. He had read and admired the marquis of Beccaria, and determined to try the effects of his plan. He put a stop to all capital punishments, even for the greatest crimes, and the consequences have convinced the world of its wholsomeness. The galleys and slavery for a certain term of years, or for life in proportion to the crime, have accomplished what an army of hangmen with their hooks, wheels, and gibbets, could not. In short, Tuscany, from being a theatre of the greatest crimes and villainies of every species, is become the safest and best ordered state of Europe." Lee's Memoirs, p. 53.

Dr. Moore, whose writings have so happily united profound observation with amusing bagatelle, imputes the frequency of murder in Italy to the laxity of the police, the number of sanctuaries, and the ease with which pardons are obtained—that is, to the *hopes of impunity*. " As soon, says he, as asylums for such criminals are abolished, and justice is allowed to take its natural course, that foul stain will be entirely effaced from the national character of the modern Italians. This is already verified in the grand duke of Tuscany's dominions. The edict which declared that churches and convents should no longer be places of refuge for murderers,—(and the same edict abolished the penalty of death)—has totally put a stop to the *stilletto* ; and the Florentine populace now fight with the same blunt weapons that are used by the common people of other nations." Vol. 4 Lett. 43.

To these might be added the testimony of de Archenholtz, and other writers : but the most direct and satisfactory evidence that the *abolition* of capital punishments has not impaired the public safety, is derived from the edict of 1786.

This was the completion and *formal* establishment of a system which before that period had been considered as an *experiment*. In the introduction, the grand duke states, that on his accession he began the reform, by moderating

derating the rigor of the old law, and abolishing the pains of death : and that he had waited until " by *serious examination and trial* of the new regulations," he should be able to judge of their tendency. He then proceeds : " With the utmost satisfaction to our paternal feelings, we have at length perceived, that the *mitigation of punishments*, joined to the most scrupulous attention to prevent crimes, and also a great *dispatch* in the trials, together with a *certainty* and *suddenness* of punishment to real delinquents, has, instead of increasing the number of crimes, considerably diminished that of the smaller ones, and rendered those of an atrocious nature very rare : we have, therefore come to a determination not to defer any longer the reform of the said criminal laws."

These well established facts go far to prove that a *strict administration of justice is sufficient to repress crimes without a severity of punishment* : and if we contrast the situation of Tuscany with that of the rest of the Italian states or other countries, where sanctuaries abound, it will establish the converse of the proposition, and prove that it is the *impunity* of the criminal alone which governments ought to dread.

How frequent assassinations have been in Italy is well known ; and Mr. Townsend informs us, that in consequence of this impunity they abound in many parts of Spain. " In the last sixteen months, says he, they reckon seventy murders (in Malaga) for which not one criminal has been brought to justice ; and in one year, as I am credibly informed, 105 persons fell in the same manner." 3 vol. p. 18.

N O T E VI. Page 10.

[*The source of all human corruption lies in the impunity of crimes, not in the moderation of punishments.*]—The soundness of this principle may be demonstrated by the example of other European countries, as well as of Russia and Tuscany ; and will be further illustrated if we contrast *their* situation with that of England.

It appears that the severity of the ancient criminal laws in Sweden has been of late so greatly mitigated, that all writers agree, they are now remarkable for the moderation of their punishments. We learn from Mr. Coxe,

that many offences, which in other countries are considered as capital, are there chastised by whipping, condemnation to bread and water, imprisonment and hard labour. More than 120 strokes of the rod are never inflicted, nor is a criminal sentenced to *bread and water* longer than 28 days. 2 vol. 392.

But Mr. Catteau, who published his "*View of Sweden*" so late as 1789, resided long in that country, and had the best sources of information. "The criminal laws (says this elegant writer) which are followed by the Swedish tribunals, display a striking character of humanity and justice; and for this they are indebted principally to the reformation they have undergone in the present reign. These laws establish an exact proportion between the crime and the punishment: *that of death is not yet entirely abolished*; but in several cases, banishment, whipping, paying a fine, and labouring at the public works, are substituted in its stead. Criminals condemned to die, are generally beheaded: severer punishments are appointed for those crimes, which shock humanity by their atrocity; but of these there are few instances in Sweden." P. 158.

So far is this mildness of the laws from injuring the public welfare, that the character of the whole nation seems to be meliorated by suppressing the frequency of capital punishments. "Though Sweden is covered with rocks, woods, and mountains, its inhabitants are mild and peaceable. Theft, murder, robbery, and atrocious crimes in general, are very uncommon amongst them; and even in war they do not appear to be sanguinary." Ib. p. 325.

In *Denmark*, as has been already mentioned, robbery is never punished with death, except when committed by a convict who has escaped from the public labour, to which he was condemned. But the administration of justice is *strict*; and the consequence is, that robberies, burglaries, and other gross crimes, are very rare, even in the capital. "Night Robberies, says Mr. Howard, are never heard of in Copenhagen." Pris. p. 76.—Mr. Williams in his *View of the Northern Governments* mentions the same fact, and attributes it "to the good police and the difficulty of escaping out of the island." 1 vol. p. 353. What is this but acknowledging, that it is the *certainty* and not the *severity* of the punishment which prevents offences?

In *Vienna*, the late emperor Joseph began the reform, not by abolishing the penalty of death, but by an universal requisition to the judges *to be mild in their sentences, and never to inflict capital punishments without necessity*. This mode of submitting the guilty to the discretion of the judges (which now prevails in *Maryland*, in most cases of felony, without clergy, and formerly did in *New Jersey*, in that of horse-stealing) seems liable to many objections. Moderate penalties, however, were by this means generally introduced at *Vienna*; and it is a fact well authenticated, that aided by a strict police, they have been found sufficient. Atrocious crimes are seldom committed. *Reisb. Trav. II. vol. p. 106.*

The punishment of hard labour, which is the correction inflicted (and inflicted with great mildness) upon all crimes in *Holland*, except those of a very high degree, is attended with the most beneficial effects. These result principally from the excellent management which prevails in the *rasp* and *spin houses*. Mr. Howard paid particular attention to these wise and benevolent institutions, and he informs us, that many have been reformed, and have come out of the *rasp houses* sober and honest; and that some have even chosen to continue to work in them after their discharge. The great object attended to in these *bettering houses* (as they are very properly called) is to reclaim and reform the criminal; and the consequence is, that by checking the young offender in his first attempts, gross crimes are prevented. Accordingly we find that executions are very rare, the annual average in *all the United Provinces* being from 4 to 6.

In *Amsterdam*, which contains above 250,000 people, there were but six persons executed in the twelve years preceding 1787. I find that there were in the same time no less than 572 persons hanged or burnt, in *London* and *Middlesex*: and of these at least three fourths were under twenty years of age. Even the smaller offences do not greatly abound in *Holland*: and the success of these mild institutions confirms the great principle which is the motto of this work. See the Tables in *How. Laz. p. 256, 7, 8. How. on Pris. p. 66. 45. do. Laz. 74. 18 Parl. Reg. 522.*

Let us now examine the situation of *England* where an opposite principle is adopted, and where the terror of death

death is on all occasions resorted to as the surest means of preventing crimes.

Blackstone in his Commentaries stated the number of capital crimes, (that is, of felonies ousted of clergy) at 160. Since that time they seem to have increased: for in 1786, Capel Loft enumerates and states them as follows:

Felonies without clergy - 176

Felonies within clergy - 65. Jebb on Pris. 96.

Amidst this multitude of sanguinary laws, atrocious crimes are very frequent; and the severity of the punishment, by being familiar, is no longer an object of terror, and by exciting hopes of impunity, has become the parent of crimes. "I cannot tell, (says Dr. Goldsmith) whether it is from the number of our penal laws or the licentiousness of our people, that this country should shew more convicts in a year than *half of the dominions* of Europe united." Wendeborn, an intelligent German, who resided some time in England, assures us, that the punishment of death is more frequently inflicted in England than in *all Europe together*, in the same space of time. Hence it is, that executions lose all the terrors which attend them in other countries. I. vol. p. 75. The author of *Thoughts on Executive Justice*, thus describes the situation of England in 1785: "No civilized nation, that I know of, has to lament, as we have, the daily commission of the most dangerous and atrocious crimes; insomuch that we cannot travel the roads, or sleep in our houses, or turn our cattle into the fields, without the most imminent danger of thieves and robbers. These are increased in such numbers, as well as audaciousness, that the day is now little less dangerous than the night." P. 4. One of the English prints, 9 November, 1784, says, "If robbers continue to increase as they have done for some time past, the number of those who rob will exceed that of the robbed."

These representations are confirmed by the declarations of the solicitor general and Mr. Townsend, in the house of commons in the same year. They affirm, that in the course of the winter, *every day* furnished some fresh account of daring robberies or burglaries being committed; that few persons could walk the streets at night, without fear, or lie down in safety in their beds; for that

that gangs of 6, 8, 10, or 12 persons together, made it a practice to knock at doors, and immediately to rush in and rob the house. 18 Parl. Reg. P. 83. 521. Compare this with the situation of Copenhagen, where night robberies are never heard of.

The number of persons executed in England may be seen in the tables already referred to. In the Lent circuit only, no less than 286 persons were capitally convicted in 1786, and the annual amount of those transported is from 960 to a thousand.

It is needless to make observations on these striking facts which prove conclusively, that the severity of the laws instead of preventing, is frequently the cause of crimes. The humanity of mankind revolts at a strict execution of them, and the hopes of impunity become a source of temptation. To this, Mr. Howard, among others, traces the mischief: "and yet, (he adds) many are brought by it to an untimely end, who might have been made useful to the state." Laz. 221. No one will deny the justice of this last observation, when they learn from the mouth of the solicitor general of England, "That of those who are executed, eighteen out of twenty do not exceed 20 years of age." 18 Parl. Reg. 22.

It is difficult to conceive how a free, humane, and generous people should have so long endured this weak and barbarous policy; or why America should be fond of retaining any part of a system, as ineffectual as it is severe!

NOTE VII. Page 11.

Horse-stealing is a crime which naturally irritates a nation of farmers: and when they are provoked by its frequency they are apt to call for a punishment neither proportioned to the offence nor calculated to prevent it.

This crime became so prevalent in *Pennsylvania*, during the confusions of the war, which interrupted the regular administration of justice, that the assembly thought it necessary to increase the punishment of it. They would have extended the penalty to death itself, had not the late Judge Bryan, at that time a member of the legislature (who to a sound understanding added a familiar acquaintance with all the philosophy of jurisprudence) strenuously

strenuously opposed it. He made it evident to the good sense of the country members, who were intent upon this punishment, that the severity of the act would defeat its execution, and that a milder penalty would be a more effectual restraint. The subsequent experience of Pennsylvania compared with that of New Jersey (where in the same year the penalty of death was resorted to) fully proves the soundness of this opinion.

I know not any government in Europe which punishes this offence with death, in the present day, except that of England; and even there, the humanity of the nation has almost virtually abolished it. Of ninety persons, who in the space of 23 years were convicted at the Old Bailey, previous to 1771, there were but 22 executed, which is less than a fourth. See Jansen's Tables. The multitude who escape for want of prosecution, or by the tenderness of juries, is much greater; and it is *now* so common to grant a reprieve, that a well informed writer affirms, that the chance of obtaining it is as *one to forty in favour of the thief!* Thoughts on Ex. Just, p. 42. One reason of this may be, that many persons consider it as unlawful to inflict the punishment of death, in any case of simple theft, since it is warranted by no part of the law given to the Jews.

A similar difficulty in enforcing a punishment so disproportionate to the offence, has been experienced in some parts of America; and it will every day become more and more apparent in those states, which still retain this unnecessary severity. I have very respectable authority (that of the attorney general of the United States) for saying, "that within the last ten years, *pardons* for horse-stealing have multiplied in Virginia: and while the convicts might by law be put to hard labor, or executed at the will of the executive, scarce a single horse-stealer suffered death, unless he had repeated the crime, or was under some very obnoxious circumstances."

N O T E VIII. Page 11.

It may be considered as improper to appeal to the example of Maryland, where these crimes are still felonies of death, without benefit of clergy. But as the court have it in their *discretion* to adjudge every such offender

offender to hard labour, instead of pronouncing the sentence of death ; the latter is so rare, that (*as to every purpose of terror or example*) it may be considered as abolished. The punishment of hard labour, continually offered to the public eye, will be considered as the only penalty prescribed by the laws ; and no offender will count upon a greater severity, even if he be convicted.

There is reason to *believe*, that this mild administration of justice has not produced any increase of crimes—although the method of treating the male convicts does not appear to be the most unexceptionable. How the fact is, I have no information sufficiently accurate and particular, positively to affirm. Measures have been taken to procure it, and if it arrives in time, it shall be added in a postscript.

Whether the task of deciding, *at discretion*, on the life or death of a fellow creature, should be imposed on any court, and how far such a power is consistent with the spirit of a republic, which is a government of laws and not of men, may deserve consideration. The *degree* of the punishment must necessarily be left to judicial discretion : but its *nature* ought as far as possible, to be ascertained by the laws. See Acts Maryl. Nov. Sess. 1789.

N O T E IX. Page 30.

There is scarce any crime which escapes punishment so often as that of rape. In support of this, I appeal to the following facts in addition to those mentioned in the text.

Between the years 1720 and 1732, there were 24 persons tried for this crime at the Old Bailey. Of all these only two were convicted ; one of them, the infamous Col. Chartres, who was pardoned ; the other, a servant boy, aged *fifteen*, who was hanged. Select Trials, &c. 1 and 2 vol.

Jansen's Tables do not state the number of acquittals : but they prove this fact, That in 23 years, no more than 9 persons were convicted of rape, and of these there were executed—Two !

Though it is not in my power to state the relative number of persons convicted or acquitted of this crime in other states, I have such information as satisfied me, that
the

the severity of the punishment produces in America the same effects which attend it in England and Scotland.

Mr. Randolph, who held the office of attorney general in Virginia many years, informs me, that "thus much may be safely affirmed, that the proportion of the *acquitted* to the *charged* in that state was *very great*, leaving but *few* convicts. It seems as if something more than *usual* tenderness for life operated with the juries on these occasions; and they appeared to lay aside their natural abhorrence of the act, to seize the smallest symptoms of innocence!"

NOTE X. Page 35.

The practice of punishing murder with death, has been so general among civilized nations, that some writers have considered it as sanctioned by the *universal consent* of mankind, and as *absolutely necessary* for the safety of society. It is certain, however, that it has been dispensed with in many countries, at different periods: and a review of the best authenticated facts of this kind (obscured as some of them may be by the mist of time) will not be useless. Taken together, they will impress upon our minds these two important truths—*That the penalty of death is not in its own nature necessary*, and yet, *That it is dangerous, rashly to abolish it!*

The most ancient instance on record, is that of Sabaco, king of Egypt. The account is to be found in *Herodotus* and *Diodorus Siculus*: That of the latter, translated by Booth, is this: "A long time after him one Sabach, an Ethiopian, came to the throne, going beyond his predecessors in his worship of the gods and kindness to his subjects. Any man may judge of his gentle disposition in this, that when the law pronounced the severest judgment, I mean sentence of death, *he changed the punishment*, and made an edict that the condemned person should be kept to work in the town, in chains, by whose labour he raised many mounts and made many commodious canals." p. 34. "He thought (says Mr. Goguet) that Egypt would draw more profit and advantage from this kind of punishment, which, being for life, appeared to him equally adapted to punish crimes *and to repress them.*" What its effects were is not so evident: but the ancients speak in terms of approbation of this clemency: and it is certain, that

that during his long reign of 50 years, Sabaco did not see cause to alter it; and his successor Anyfis seems to have continued it. This example is cited with approbation, by sir Tho. Moore, Puffendorff, Grotius, and other modern writers. See Diod. Sic. L. I. ch. 65. Puff. b. 8. ch. 3. §. 23. Gogu. Orig. Laws, 3 vol. p. 15. 1st Rollin Ant. Hist. 90.

“ Among the *Persians* it was not lawful either for a private person to put any of his slaves to death, or for the prince to inflict *capital punishment* upon any of his subjects for the first offence; because it might rather be considered as an effect of human weakness and frailty than of a confirmed malignity of heart.” 2d Rollin Ant. Hist. p. 221.

Rome furnishes us with a more brilliant and better authenticated example. It is well known that soon after the expulsion of the decemviri the *Porcian law* ordained, that no *citizen* of *Rome* should be put to death. In the happy ages of the republic, his country was every thing to a Roman, and banishment the heaviest of punishments! For the space of 200 years, from the establishment of equal liberty to the end of the second Punic war, penalties short of death were found sufficient for the government of *Rome*. Simple in their manners, frugal, unacquainted with luxury, and intent upon conquering the world, these proud republicans had neither leisure nor inclination for the commission of crimes. Livy more than once triumphs in this moderation of punishments, and no historian has hinted that during the period I have mentioned, they were inadequate to their object!

But we must remember at the same time, that capital punishments were found necessary in the *camp*, and while they were denied to the *magistrate*, were absurdly trusted to the discretion of a *master* and a *parent*. See 4 Gibbon's Hist. ch. 44. Quarto.

When *Rome* lost her liberty, a profusion of capital punishments ensued; and under the emperors, the hands of the executioner were every day stained with the blood of the citizen. But in the decline of the Eastern Empire, an opinion grew up, that it was unlawful to shed *Christian* blood: and capital punishments were sometimes suppressed *without substituting any efficient check* in their place. To mutilate an offender and then turn him loose, was but to provoke him to the commission of new crimes.

Hence

Hence they became frequent—insurrections multiplied—and the throne tottered from the shameful imbecility of the laws. Anastatius, it is said, punished no crimes at all : and Mauritius, Isaac Angelus, and others, by *rashly* suppressing the punishment of death among so corrupted a people, endangered their own safety and that of their subjects. See Rise and Fall of Rom. Emp. p. 212. Spir. Laws B. 6. ch. 21.

The conduct of *Alexius Comnenus*, an enlightened prince, distinguished equally for his talents and virtues, deserves a closer inspection ; and I regret that I have no sources of information sufficiently particular to ascertain the effects of his regulations. I only learn from Mr. Gibbon, “ that during his reign of 25 years, the penalty of death was abolished in the Roman empire : a law of mercy most delightful to the humane theorist, but of which, the practice in a large and vicious community is seldom consistent with the public safety. Severe to himself, indulgent to others, chaste, frugal and abstemious. He despised and moderated the stately magnificence of the Byzantine court, so oppressive to the people, and so contemptible to the eye of reason. Under such a prince, innocence had nothing to fear, and merit every thing to hope : and without assuming the tyrannical office of censor, he introduced a gradual, but “ *visible reformation in the public and private manners* of Constantinople.” V Gibb. Hist. Decline and fall, &c. ch. 48.

The punishments inflicted on those who conspired against him, were confiscation of goods, and banishment. 6 Univ. Hist. 617.

The only countries in modern Europe, in which murder is not punished with death, are Russia and Tuscany. It has already been mentioned that the empress Elizabeth made a vow, that she would put no one to death. This clemency has been much celebrated, and *Blackstone* enquires, “ Was the vast territory of all the Russias worse regulated under the late empress than under her more sanguinary predecessors ?” But Mr. Williams assures us, that the *abuse* of this clemency became so intolerable, that the senate requested Catharine II. to re-establish the law, which ordained that *certain* crimes should be punished with death. North. Gov. vol. II. p. 255. This appears to have been complied with : as the same author mentions an instance of four villains being condemned

damned to be broke upon the wheel for murder, p. 265. The punishment of death, however, is now formally retained only in the case of high treason: yet, in that prescribed for murder, it virtually subsists. Though no one is literally sentenced to die, many are knotted to death. This punishment, says Mr. Howard, is often dreaded more than death, and sometimes the criminal has endeavoured to bribe the executioner to kill him. It seldom causes immediate death, but death is often the consequence of it. Pris. 86. 2d Coxe's Trav. 82. Tho' all felons are liable to undergo the knot, yet it is inflicted with this peculiar severity on murderers, "who never receive any mitigation of their punishment." To this is added the flitting of the nostrils, and branding on the cheek with hot irons. This horrid method of torturing the body, attended with such consequences, may well be dreaded more than the mere loss of life, and I cannot consider it as any moderation of the punishment. It is probably owing to the remaining barbarism of some parts of Russia, that this severity is thought *necessary*: and the abuse of the clemency of the former reign has been attributed to this circumstance. 2d Will. North. Gov. 232.

But what shall we say to the example of Tuscany? There, not only are *the pains of death* abolished, but every kind of *cruel* punishment is prohibited. The beneficial effects have been stated: and General Lee says, "it is a known fact that since the adoption of this plan, there have been but two murders committed: one by a little boy of eleven years old, in a stroke of passion; and the other, not by a native *Italian* subject, but by an Irish officer." Memoirs, p. 53. But the point of time to which he refers is not ascertained.

It were desirable to know how far that police which the Grand Duke calls "a vigilant attention to prevent the commission of crimes," extends, and whether it coincides with the general liberty of the subject. If it be such as was established by Spinelli at Rome, or as is in use at Vienna and Madrid, it could not be tolerated in a free country. D'Archenholtz's Italy, § 8. p. 161. 1 Reiss. Trav. p. 244.

As that part of the edict which abolishes the penalty of death, contains the reasons upon which it is founded, and is little known in this country, I shall here insert it.

“ We have seen with horror the facility with which,
 “ in the former laws, the pain of death was decreed,
 “ even against crimes of no very great enormity ; and
 “ having considered that the object of punishment ought
 “ to consist, in the *satisfaction* due either to a private or
 “ a public injury ; in the *correction* of the offender, who
 “ is still a member and child of the society, and of the
 “ state, and whose reformation ought never to be des-
 “ paired of ; in the *security* (where the crime is very
 “ atrocious in its nature) that he who has committed it
 “ shall not be left at liberty to commit any others ;
 “ and finally, in the *public example* ; and that the govern-
 “ ment, in the punishment of crimes, and in adapting
 “ such punishment to the objects, towards which alone
 “ it should be directed, ought always to employ those
 “ means, which, whilst they are the *most efficacious*, are
 “ the *least hurtful* to the offender ; which efficacy and
 “ moderation *we find* to consist more in condemning the
 “ said offender to hard labor, than in putting him to
 “ death ; since the former serves as a lasting example,
 “ and the latter only as a momentary object of terror,
 “ which is often changed into pity ; and since the for-
 “ mer takes from the delinquent the possibility of com-
 “ mitting the same crime again, but does not destroy the
 “ hope of his reformation, and of his becoming once
 “ more an useful subject : and having considered besides,
 “ that a legislation very different from our preceding one,
 “ will agree better with the *gentle manners* of this polish-
 “ ed age, and chiefly with those of the people of Tusca-
 “ ny, we are come to a resolution to abolish, and we
 “ actually abolish for ever, by the present law, the pain of
 “ death, which shall not be inflicted on any criminal,” &c.
 Sect. 51.

NOTE XI. Page 36.

Those who have been witnesses to the solemn manner
 in which executions are conducted in some parts of Eu-
 rope, speak of the impression arising from *that* circum-
 stance as wonderfully strong. Dr. Moore describes such
 an execution which he was present at in Rome, and men-
 tions in strong language *how deeply* the populace were
 affected by it ! See Letter 44, vol 4. Mr. Howard re-
 marked the same thing in Holland : and accounting for
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the few executions which take place in the United Provinces, says, "one reason of this, I believe, is the *awful solemnity* of executions which are performed in the presence of the magistrates, with great order and seriousness, and *great effect* upon the spectators. Pris. 45. p.

Whoever will contrast this with the manner in which executions have been heretofore conducted among us, will readily perceive that though we exhibit this terrible spectacle, we do not derive from it all the benefits it was designed to produce.

N O T E XII. Page 37.

"In Russia, says Montesquieu, where the punishment of robbery and murder is the same, they always murder." He speaks here of the reign of Elizabeth: but the mischief seems to have continued for some time after Catherine II. ascended the throne. Mr. Richardson, who was in Russia in 1770, mentions the practice as existing at that day. "Robberies, (says he) are here very frequent and barbarous, and constantly attended with murder." Richardf. Anecd. p. 323.

This circumstance was not unattended to; and in her *instructions*, ‡ 86. the Empress declares, "that it is the last injustice to punish in the same manner the robber, who contents himself with robbing, and him, who not only robs, but murders at the same time." Accordingly the new code has drawn this necessary distinction. Robbers are sent to public labour in Siberia, while murderers, besides undergoing the knout, are branded in the face with hot irons, kept in chains, or have their nostrils torn: and except upon a general or particular amnesty, *they receive no mitigation*. See 2d. Cox's Trav. 86 & passim.

I believe this discrimination in the punishment has put a stop to the evil complained of before it was introduced: for among all the latter writers on the state of Russia, I find no one who hints that any such practice prevails at present in that empire. See some excellent observations on the necessity of this discrimination, 4th Blackst. Com. 10 Montesquieu, B. 6. ch. 16.

NOTE XIII. Page 45.

I firmly believe that the success of all punishments by hard labour and solitary confinement, must finally depend upon the wisdom and the regulations which shall be established in the gaols of penitentiary houses, and upon the prudence and attention of those, to whom the management of the prisoners is committed. Some useful hints upon this subject lie buried, under a variety of other matter, in Mr. Howard's treatise on prisons and lazarettos: and it is much to be regretted, that no well digested plan for the *interior* management of those places of confinement has hitherto been published. The best substitute is an account of such plans as are now in use: and Mr. Caleb Lowmes, one of the inspectors of the gaol of Philadelphia, to whose humane zeal and attention, in the discharge of this voluntary duty, the public are much indebted) has undertaken to give a detail of the regulations adopted in the gaol and penitentiary house in this place, and of the management and employment of the convicts. The more minute this information is, the more useful and interesting it will be, when our sister states turn their attention to the revision and reform of their criminal laws. In hopes that this event is not very distant, I shall here add a few principles on this subject, collected from the facts or observations of Mr. Howard.

First, that houses for convicts at labour ought to be in or near a large town or city, and *easily accessible* to those who have the inspection of them. This last circumstance seems to be of the utmost importance.

Second. Mr. Howard uniformly found those houses best managed, when the inspection was undertaken without *mercenary views*, and solely from a sense of duty, and a love to humanity. So reputable is this humane task in Germany, that at Frankfort, the house of correction is inspected by the *ladies*. Pris. 128. Lazar. 71.

Third. Steady, lenient, and persuasive measures, were always found to be the best means for preventing escapes; and far preferable to rough usage, which often made the prisoners *desperate*. Laz. 206. Pris. 39.

Fourth. The great object to be attended to (especially with young offenders) ought to be to *reclaim and reform them*. Many facts prove, that this is not so difficult as
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some persons apprehend. Their *earnings* must therefore be a secondary consideration; and if the house does not maintain itself, (*as in many places it will not*) that circumstance ought not to be regarded. To promote this object of reformation, the *young* offenders ought to be separated from those who are *old* and *hardened*.

Fifth. In order to hold out a real object of terror, *solitary confinement*, on coarse diet, should be the *invariable* portion of every *old* or *great* offender. This, however, it is best to inflict at intervals, and seldom longer than 20 or 30 days at a time. The observations of Mr. Howard on this subject, deserve attention, and with them I close this note.

“ The intention of *solitary confinement*, (I mean by day as well as by night) is either to reclaim the most *atrocious* or *daring criminals*; to punish the *refractory* for crimes committed in prison; or to make a *strong* impression, in a *short time*, upon thoughtless and irregular apprentices, or the like. It should, therefore, be considered by those who are ready to commit, for a *long time*, petty offenders to absolute solitude, that such a system is *more than human nature can bear*, without the hazard of distraction or despair: and that, for want of some employ in the day, health is impaired, and a habit of idleness and inability to labor in future, is in danger of being acquired. The *beneficial* effects on the mind of such a punishment are *speedy*, proceeding from the *horror* of a vicious person's being left entirely to his own reflections. This may wear off by a *long continuance*, and a sullen insensibility may succeed.” Laz. p. 169. in the notes.

N O T E XIV. Page 45.

A revision of the criminal laws of Pennsylvania at present occupies the attention of the legislature. Those who wish to know the progress that has already been made in this great work, may find it in the following resolves, which, on the 22d instant (February) were entered into by the senate.

Resolved, That for all offences (except murder of the *first* degree) which are made capital by the existing laws of Pennsylvania, the punishment shall be changed to imprisonment at hard labor, varying in *duration* and *severity*, according to the degree of the crime.

Resolved, That the crimes, at present classed under the *general* denomination of murder, be divided into murder of the *first* and murder of the *second* degree: the latter punishable with imprisonment, at hard labor, or in solitude, or both, for any time not exceeding 21 years.

Resolved, That all murder, perpetrated by poisoning, or by lying in wait, or by any kind of wilful, premeditated, and deliberate killing, shall be deemed murder in the first degree; and all other kinds of murder shall be deemed murder in the second degree: and the jury, before whom any person shall be indicted for murder, if they find the party guilty thereof, shall ascertain whether it be murder in the first or second degree.

Resolved, That all claims to dispensation from punishment by benefit of clergy, or benefit of the act of assembly, entitled, "An act for the advancement of justice, and the more certain administration thereof," shall be for ever abolished, and a definite punishment be prescribed for all offences at present deemed clergyable: the punishment for the *second* offence to be the same in its *nature*, but in a higher *degree*.

Resolved, That a committee be appointed to bring in a bill, supplementary to the penal laws of this state, for the purpose of carrying the preceding resolutions into effect.

The committee who brought in these resolutions, reporting, "That they have doubts at present, whether the terrible punishment of death be in any case justifiable and necessary in Pennsylvania; and are desirous that the public sentiment on this important subject may be more fully known," and therefore offering the following resolution, the same was adopted by the senate, viz.

Resolved, That the revision and amendment of the laws, respecting murder of the first degree, be specially recommended to the early attention of the next legislature.

We may therefore hope, that Pennsylvania will soon give to her sister states an example of humane legislation, which may tend, in its consequences, to meliorate the condition of mankind.

Feb. 26, 1793.

This hope was fulfilled in the next year, by passing the following act.

IN

IN GENERAL ASSEMBLY,

TUESDAY, March 25, 1794.

AN ACT for the better preventing of Crimes, and for abolishing the Punishment of Death in certain Cases.

WHEREAS, the design of all punishment is to prevent the commission of crimes, and to repair the injury that hath been done thereby to society, or the individual, and it hath been found by experience that these objects are better obtained by moderate, but certain penalties, than by severe and excessive punishments. And whereas, it is the duty of every government to endeavour to reform, rather than exterminate offenders, and the punishment of death ought never to be inflicted where it is not absolutely necessary to the public safety. Therefore,

S E C T. I.

Be it enacted by the senate and house of representatives of the commonwealth of Pennsylvania, in general assembly met, and it is hereby enacted by the authority of the same, That no crime whatsoever hereafter committed, (except murder of the first degree) shall be punished with death in the state of Pennsylvania.

And whereas, the several offences which are included under the general denomination of murder, differ so greatly from each other in the degree of their atrociousness, that it is unjust to involve them in the same punishment.

S E C T. 2.

Be it enacted by the authority aforesaid, That all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate, and premeditated killing, or which shall be committed in the per-

petration, or attempt to perpetrate any arson, rape, robbery or burglary, shall be deemed murder of the first degree, and all other kinds of murder shall be deemed murder in the second degree, and the jury before whom any person indicted for murder shall be tried, if they find such person guilty thereof, shall ascertain in their verdict, whether it be murder of the first or second degree; but if such person shall be convicted by confession, the court shall proceed by examination of witnesses to determine the degree of the crime, and to give sentence accordingly.

S E C T. 3.

And be it further enacted by the authority aforesaid, That every person liable to be prosecuted for petit treason, shall in future be indicted, proceeded against, and punished as is directed in other kinds of murder,

S E C T. 4.

And be it further enacted by the authority aforesaid, That every person duly convicted of the crime of high treason, shall be sentenced to undergo a confinement in the goal and penitentiary house of Philadelphia, for a period not less than six, nor more than twelve years, and shall be kept therein at hard labour, or in solitude, and shall in all things be treated and dealt with as is prescribed by an act entitled "An act to reform the penal laws of this state," or by the provisions of this act. That every person duly convicted of the crime of arson, or as being an accessory thereto, shall be sentenced to undergo a similar confinement for a period not less than five, nor more than twelve years, under the same conditions as are herein expressed in the first clause of this section. That every person duly convicted of the crime of rape, or as being accessory thereto before the fact, shall be sentenced to undergo a similar confinement for a period not less than ten years, nor more than twenty one years, under the same conditions as are herein expressed in the first clause of this section. That every person duly convicted of the crime of murder of the second rate, shall be sentenced to undergo a similar confinement for a period not less than five years, nor more than eighteen years, under the same conditions as are herein expressed in the first clause of this section.

S E C T.

S E C T. 5.

And be it further enacted by the authority aforesaid, That every person who shall be convicted of having, after the passing of this act, falsely forged and counterfeited any gold or silver coin which now is, or hereafter shall be passing, or in circulation within this state; or of having falsely uttered, paid, or tendered in payment, any such counterfeit and forged coin, knowing the same to be forged and counterfeit, or having aided, abetted, or commanded the perpetration of either of the said crimes, shall be sentenced to undergo a confinement in the goal and penitentiary house aforesaid, for any time not less than two, nor more than seven years, and shall be kept, treated and dealt with in the manner aforesaid, and shall also pay such fine as the court shall adjudge, not exceeding one thousand dollars.

S E C T. 6.

And be it further enacted by the authority aforesaid, That whosoever on purpose, and of malice aforethought by lying in wait, shall unlawfully cut out, or disable the tongue, put out an eye, slit the nose, cut off the nose, ear, or lip, or cut off, or disable any limb, or member of another, with intention in so doing to maim, or disfigure such person; or shall voluntarily, maliciously and of purpose, pull or put out an eye, (commonly called gouging) while fighting, or otherwise; every such offender, his or her aiders, abettors and counsellors, shall be sentenced to undergo a confinement in the goal and penitentiary house aforesaid, for any time not less than two, nor more than ten years, and shall be kept, treated and dealt with in manner aforesaid; and shall also pay a fine not exceeding one thousand dollars, three fourth parts whereof shall be for the use of the party grieved.

S E C T. 7.

And be it further enacted by the authority aforesaid, That whosoever shall be convicted of any voluntary manslaughter, hereafter committed, either by stabbing another or otherwise, shall be sentenced to undergo an imprisonment
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at hard labor and solitary confinement in the goal and penitentiary house of Philadelphia, for any time, not less than two nor more than ten years, and to give security for his or her good behaviour during life, or for any less time, according to the nature and enormity of the offence ; and for the second offence shall be sentenced to undergo an imprisonment at hard labor and solitary confinement, in the gaol and penitentiary house aforesaid, for any time not less than six nor more than fourteen years.

S E C T 8.

And be it further enacted by the authority aforesaid, That wheresoever any person shall be charged with involuntary man-slaughter, happening in consequence of an unlawful act, it shall and may be lawful for the attorney general or other person prosecuting the pleas of the commonwealth, with the leave of the court, to waive the felony, and to proceed against and charge such person with a misdemeanor, and to give in evidence any act or acts of man-slaughter, and such person or persons on conviction, shall be fined or imprisoned as in cases of misdemeanor ; or the said attorney general or other person, prosecuting the pleas of the commonwealth, may charge both offences in the same indictment, in which case the jury may acquit the party of one, and find him or her guilty of the other charge.

S E C T. 9.

And be it further enacted by the authority aforesaid, That all claims to dispensation from punishment by benefit of clergy or benefit of the act of assembly, entitled, " An act for the advancement of justice and more certain administration thereof," shall be and hereby are forever abolished ; and every person convicted of any felony heretofore deemed clergyable, shall undergo an imprisonment at hard labor and solitary confinement, in the gaol and penitentiary house aforesaid, for any time not less than six months and not more than two years, and shall be treated and dealt with as is directed in the act, to reform the penal laws of this state, except in those cases where some other specific penalty is prescribed by the act aforesaid, to reform the penal laws of this state, or by this act.

S E C T. 10.

S E C T. 10.

And be it further enacted by the authority aforesaid, That every person convicted in any county in this state other than Philadelphia county, of any crime (except murder of the first degree) which now is, or on the fifteenth day of September, one thousand seven hundred and eighty six, was capital, or a felony of death without benefit of clergy, or of knowingly uttering counterfeit coin, shall as soon as possible be safely removed and conveyed by the sheriff, and at the expence of the commonwealth, to the gaol and penitentiary house aforesaid, and therein be kept during the term of their confinement, in the manner and on the terms mentioned in the thirty-fourth section of the act, entitled "An act to reform the penal laws of this state;" and every sheriff who shall neglect to remove and safely deliver at the gaol aforesaid such convict, within forty days after sentence is pronounced on the said convict, shall forfeit and pay the sum of one hundred dollars, to be recovered in any court of justice, and applied one half to the use of the county in which the offence was committed, the other to such person as shall sue for the same.

S E C T. 11.

And be it further enacted by the authority aforesaid, That every person convicted of any of the crimes last aforesaid, and who shall be confined in the gaol and penitentiary house aforesaid, shall be placed and kept in the solitary cells thereof, on low and coarse diet, for such part or portion of the term of his or her imprisonment, as the court in their sentence shall direct and appoint, provided that it be not more than one half, nor less than one twelfth part thereof; and that the inspectors of the said gaol shall have power to direct the infliction of the said solitary confinement, at such intervals and in such manner as they shall judge best. Whereas it is of importance, that the nature of the offence, and the former conduct and character of the convict should be known by the said inspectors and their successors in office.

S E C T. 12.

S E C T. 12.

And be it further enacted by the authority aforesaid, That whensoever any person shall be convicted of any crime, which on the said fifteenth day of September, one thousand seven hundred and eighty-six, was capital or a felony of death ; or shall be removed from any county to the gaol and penitentiary house aforesaid, the court before whom such conviction is had, shall, within forty days after such offender is removed from the said county, make, and cause to be transmitted to the said inspectors, a report or short account of the circumstances attending the crime committed by such convict, particularly such as tend to aggravate or extenuate the same ; and also what character the said convict appeared on the trial to sustain, and whether he had at any time before been convicted of any felony, or other infamous crime, which report the said inspectors, shall cause to be entered in books or registers, to be provided for that purpose.

S E C T. 13.

And be it further enacted by the authority aforesaid, That if any person convicted of any crime, which on the said fifteenth day of September, one thousand seven hundred and eighty-six, was capital or a felony of death without benefit of clergy, shall commit any such offence a second time, and be thereof legally convicted, he or she shall be sentenced to undergo an imprisonment in the said gaol and penitentiary house at hard labor during life, and shall be confined in the said solitary cells, at such times and in such manner as the inspectors shall direct ; and if any person, sentenced to hard labor and solitary confinement by virtue of this or any former act, shall escape or be pardoned, and after his or her escape or pardon shall be guilty of any such offence, as on the said fifteenth day of September, one thousand seven hundred and eighty-six, was capital or a felony of death without benefit of clergy, such person shall be sentenced to undergo an imprisonment, for the term of twenty-five years, and shall be confined in the solitary cells aforesaid, at the discretion of the said inspectors.

S E C T. 14.

S E C T. 14.

And be it further enacted by the authority aforesaid, That if any person shall hereafter be convicted of any crime committed before the passing of this act, he or she shall be sentenced to undergo such pains and punishment, as by the laws now in force are prescribed and directed, unless such convict shall openly pray the court before whom such conviction shall be had, that sentence may be pronounced agreeably to the provisions of this act for the like offence, in which case the said court shall comply with the said prayer, and pass such sentence on such convict as they would have passed had the said offence been committed subsequent to the passing of this act.

S E C T. 15.

And be it further enacted by the authority aforesaid, That every person convicted of murder of the first degree, his or her aiders, abettors and counsellors, shall suffer death by hanging by the neck.

S E C T. 16.

And be it further enacted by the authority aforesaid, That no person indicted for any crime, the punishment whereof is altered by this act, shall lose any peremptory challenge to which he or she would have been entitled, had this act not been passed, nor be liable to be tried before any court other than the supreme court, or court of oyer and terminer, in the county where the fact was committed.

S E C T. 17.

And be it further enacted by the authority aforesaid, That if any woman shall endeavour privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which if it were born alive would by the law be a bastard, so that it may not come to light, whether it was born dead or alive, or whether it were murdered or not, every such mother being convicted thereof, shall suffer imprisonment at hard labor

labor in the county gaol of the county where the fact was committed, or in the gaol and penitentiary house aforesaid, for any time not exceeding five years, or shall be fined and imprisoned at the discretion of the court, according to the nature of the case ; and if the grand jury shall in the same indictment charge any woman with the murder of her bastard child, as well as with the offence aforesaid, the jury by whom such woman shall be tried, may either acquit or convict her of both offences, or find her guilty of one and acquit her of the other as the case may be.

S E C T. 18. .

And be it further enacted by the authority aforesaid, That the concealment of the death of any such child shall not be conclusive evidence, to convict the party indicted of the murder of her child, unless the circumstances attending it be such as shall satisfy the mind of the jury, that she did wilfully and maliciously destroy and take away the life of such child.

S E C T. 19.

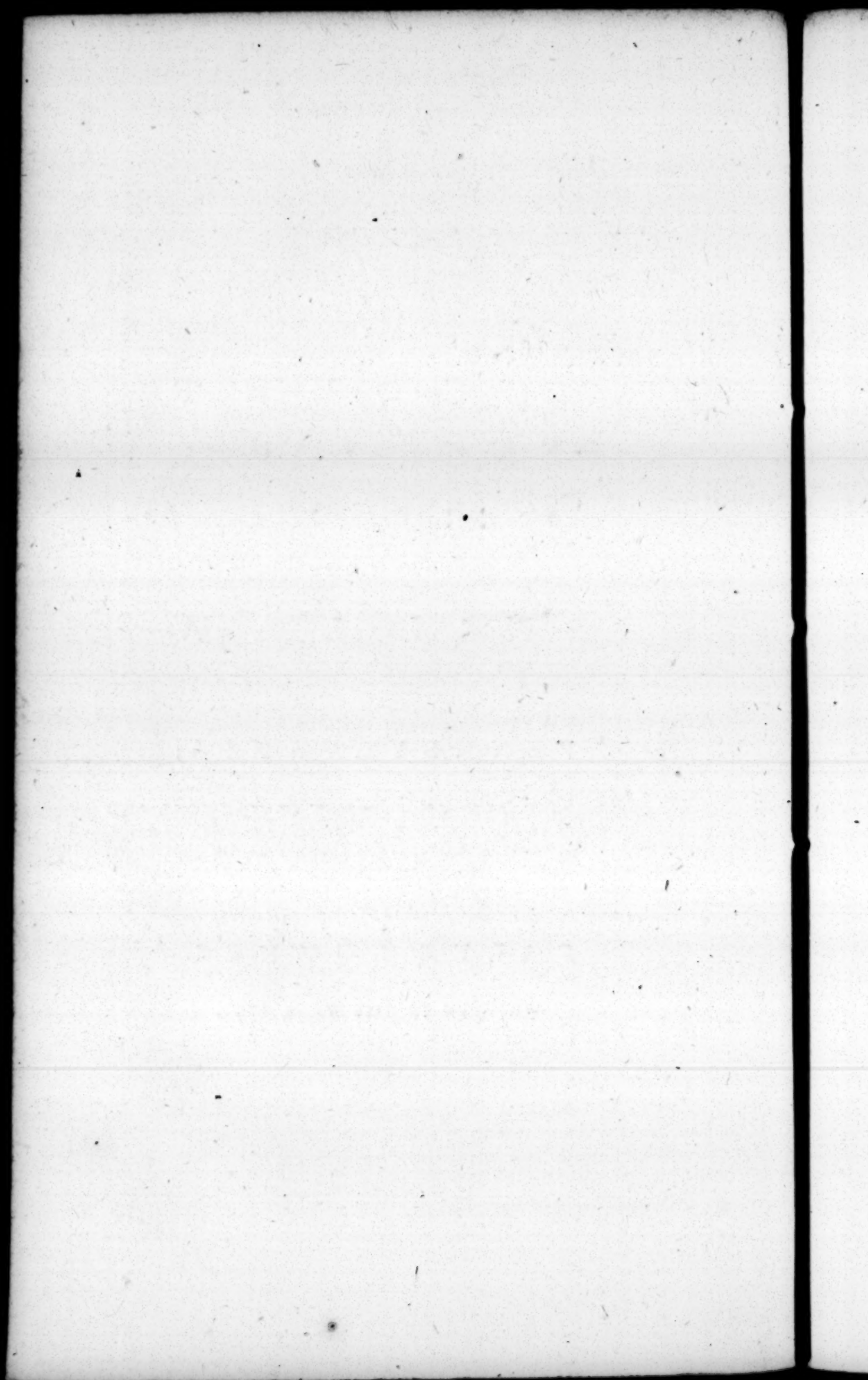
And be it further enacted by the authority aforesaid, That the several acts of assembly of this commonwealth and such parts thereof, so far as the same are repugnant to, or supplied by this act, and no further, shall be, and hereby are repealed.

AN
ACCOUNT
OF THE
ALTERATION AND PRESENT STATE
OF THE
PENAL LAWS
OF
PENNSYLVANIA;

CONTAINING ALSO AN ACCOUNT OF THE GOAL AND
PENITENTIARY HOUSE OF PHILADELPHIA AND
THE INTERIOR MANAGEMENT THEREOF.

BY
CALEB LOWNES.

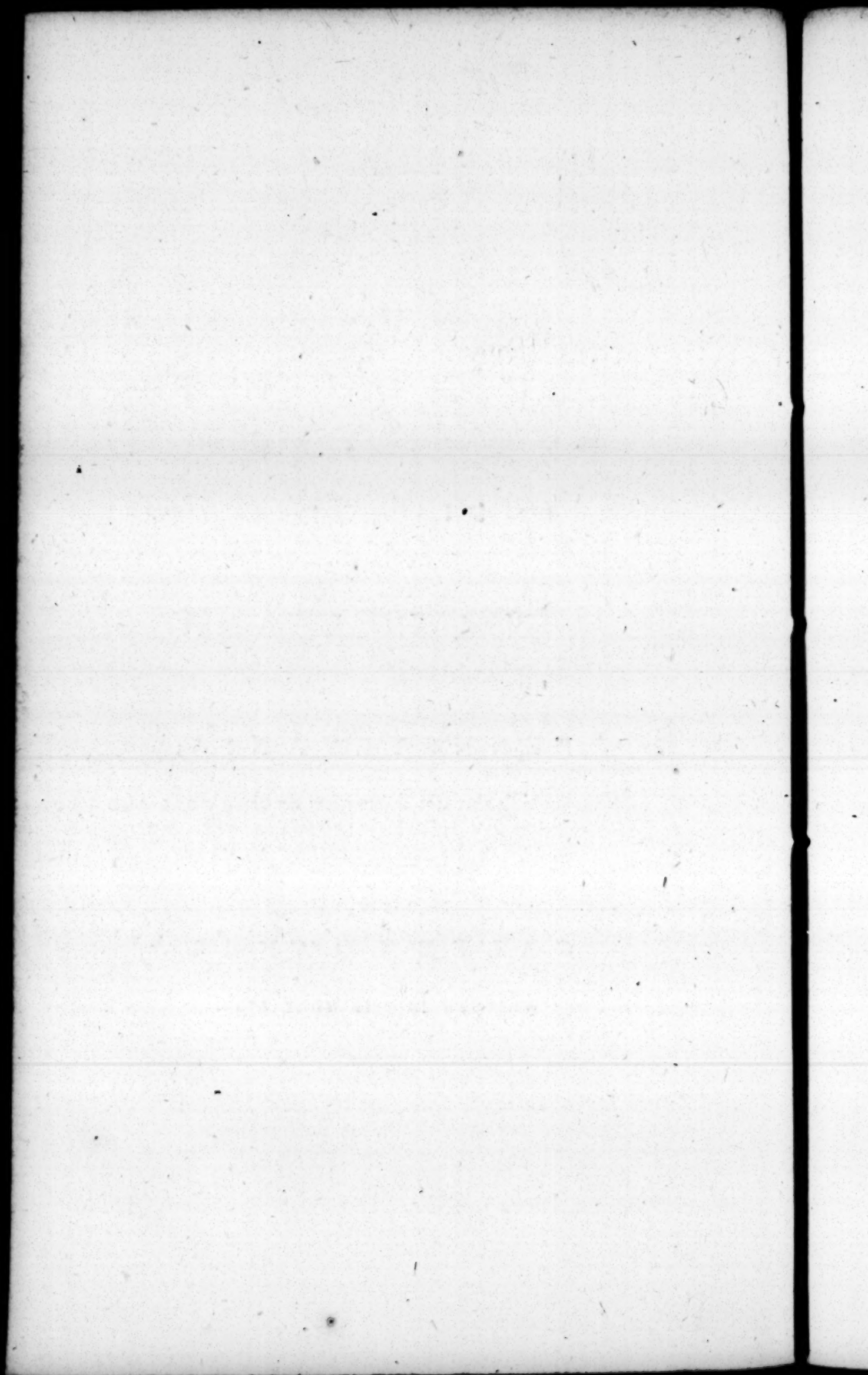
WRITTEN IN THE YEAR 1792.



A N
A C C O U N T
O F T H E
ALTERATION AND PRESENT STATE
O F T H E
P E N A L L A W S
O F
P E N N S Y L V A N I A, &c.

I N T R O D U C T I O N.

ENQUIRIES are frequently made by citizens as well as by strangers, about the interior management of the goal and penitentiary house of Philadelphia: and as I have frequently been requested by respectable characters in other states, who wished a change in their system, to furnish some account of the means that led to the present regulations of our prison, and the effects produced by them, connecting this account with the "*Enquiry, &c.*" may be as proper a mode as any that can be adopted for giving them the desired information. I have therefore made the attempt, and if any assistance in my power can contribute to promote a work of so much importance to mankind as that of reforming the system of criminal jurisprudence, I shall freely afford it. The many improvements, both in government and the arts, which have been produced in our time, afford pleasing prospects to liberal and enlarged minds, and have been a great encouragement to those who have ventured to combat ancient prejudices, and to attempt improvements, in a science hitherto so little attended to, and of so great importance in every system of legislation.



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ENQUIRIES are frequently made by citizens as well as by strangers, about the interior management of the goal and penitentiary house of Philadelphia: and as I have frequently been requested by respectable characters in other states, who wished a change in their system, to furnish some account of the means that led to the present regulations of our prison, and the effects produced by them, connecting this account with the "*Enquiry, &c.*" may be as proper a mode as any that can be adopted for giving them the desired information. I have therefore made the attempt, and if any assistance in my power can contribute to promote a work of so much importance to mankind as that of reforming the system of criminal jurisprudence, I shall freely afford it. The many improvements, both in government and the arts, which have been produced in our time, afford pleasing prospects to liberal and enlarged minds, and have been a great encouragement to those who have ventured to combat ancient prejudices, and to attempt improvements, in a science hitherto so little attended to, and of so great importance in every system of legislation.

It is true, society has not been without information upon this interesting subject. Montesquieu, Beccaria, Lofft, and others, have thrown considerable light upon it. The benevolent Howard greatly sympathized with the wretched prisoner; he has largely displayed the errors in principle, and the cruelties in practice, of the criminal laws of most countries in Europe; and having laboured with uncommon zeal to alleviate the evils which they have produced, died in the prosecution of this important service: but a system founded upon the clear and unquestionable rights and duties of citizens of a mild and well ordered government, has not yet met the public eye: Pennsylvania has gone the farthest in the formation of such a system, of any government that has come to my knowledge, and from the exertions of the present legislature, we have reason to hope that she will be the first to place the *fair* "key stone to the arch of this benevolent work."

A BRIEF ACCOUNT OF THE ALTERATION OF THE PENAL LAWS OF PENNSYLVANIA.

THE distresses of the prisoners and disorders in the prison, in this city, had long engaged the sympathetic attention of many of the inhabitants. Occasional relief was often afforded; but the first attempt, essentially to remove these evils, was made a few years before the revolution; when a society was formed for that purpose. The war put an end to the society.

In the year 1776, the convention of Pennsylvania directed a reform of the penal laws, and the introduction of *public* hard labour, as a punishment for offences. This was attended to by the Legislature; and an essay was made in the year 1786, by a law which directed, that the convicts should be employed in cleaning the streets, repairing the roads, &c. have their *heads shaved* and be distinguished by an *infamous* habit. This was literally complied with, but however well meant, was soon found to be productive of the *greatest evils*: and had a very opposite effect from what was contemplated by the framers of the law. The disorders in society, the robberies, burglaries, breaches of prison, alarms in town and country; the drunkenness, profanity

profanity and indecencies of the prisoners in the streets, must be in the memory of most. With these disorders the numbers of the criminals encreased to such a degree as to alarm the community with fears, that it would be impossible to find a place either large or strong enough to hold them. The severity of the law, and disgraceful manner of executing it, led to a proportionate degree of depravity and insensibility, and every spark of morality appeared to be destroyed. The keepers were armed with swords, blunderbusses, and other weapons of destruction. The prisoners, secured by cumbersome iron collars and chains, fixed to bomb-shells. Their dress was formed with every mark of disgrace. The old and hardened offender daily in the practice of begging and insulting the inhabitants, collecting crouds of idle boys, and holding with them the most indecent and improper conversation. Thus disgracefully treated, and heated with liquor, they meditated, and executed, plans of escape—and when at liberty, their distress, disgrace, and fears, prompted them to violent acts, to satisfy the immediate demands of nature. Their attacks upon society were well known to be desperate, and to some they proved fatal!

In this situation of things, the minds of the citizens were variously affected; some were concerned for the condition to which the laws had doomed them indiscriminately; others were affected with the scenes which the streets of the city exhibited—Scenes which were a disgrace to any people! Whatever were the motives, exertions were used to alleviate the sufferings of the prisoners, and, if possible, to apply a remedy for these great and growing evils.

The magnitude of these sufferings and disorders, at length induced the attempt of forming a society for that purpose, which was effected under the title of “The Philadelphia society for alleviating the miseries of public prisons.”—It soon became large and respectable* and from

K 2

subscriptions

* The notice which the benevolent Howard took of this society in his account of the principal lazarettos in Europe, will shew the idea he entertained of its usefulness. “Should the plan take place, during my life, of establishing a *permanent charity*, under some such title as that at PHILADELPHIA, viz. *A Society for alleviating the miseries of public prisons*, and annuities be engrafted thereupon for the abovementioned purpose, I would most readily stand

subscriptions and donations early possessed funds equal to its object. The constitution is short, and may prove useful, I have annexed it to this communication.

They appointed a committee of six members to visit the prisons ; furnish bread when necessary ; clothe the naked ; accommodate differences ; discharge those confined for small debts ; and generally to mitigate the sufferings inseparable from such places of confinement. At the time they visited, the disorders *out of prison* equally attracted their attention, and excited a more particular enquiry into the causes of these complicated evils. They were well assured that the funds of the society would be distributed to little effect, unless some means were used to discover the *cause* and to *remedy* the evil. A firm conviction was soon produced, that the *severity of the laws*, with the *disgraceful mode* of carrying them into effect, joined to a *want of government* in the prison ; the admission of all kinds of characters to a *free communication with the prisoners* ; the *unlimited use of spirituous liquors* ; the indiscriminate mixture of all descriptions of prisoners, without regard to character, sex, or condition, and idleness in the house, were among the principle causes of the evils complained of : to remedy which, the society, in conjunction with the corporation, made an application to the legislature for an alteration in the penal system, to place the prison under the *inspection of some of the citizens* ; to erect solitary cells ; and to form a plan for its government. This was complied with, and inspectors were directed to be chosen ; who were empowered, with the approbation of the mayor, two aldermen, and two judges of the supreme court, or two of the judges of the common pleas of Philadelphia county, to make *rules and regulations for the government* of all convicts confined in the said prison, &c. The first care of the inspectors was to *remove the debtors* into another house, entirely distinct from the convicts prison ; to put a stop to all improper *out-door communications* ; to separate the sexes ; to suppress the *use of spirituous liquors* of all kinds ; to introduce a *system of labour*, suited to their situation, trades and strength, to
frame

stand at the bottom of a page as a subscriber for £. 500, or if such society shall be constituted within three years after my death, this sum shall be paid out of my estate.

frame a plan of *government for the house*, and *directions for the officers*, which is hereto annexed ; and generally to introduce *order, decency, æconomy, and industry*.

The business before them was laborious, but the necessity and importance of the work encouraged them to exertions, which, for a time, were arduous, and attended with many unpleasant circumstances ; but a steady perseverance overcame many long-established injurious customs, and produced the present agreeable change, an account of which I shall now, as briefly as possible, proceed to state.

One of the oldest, and not least of the evils, was

GAOL FEES.

This injurious custom, attended with such a variety of evil consequences, was discontinued, and the KEEPER compensated in a *more eligible and permanent manner*, by a *yearly salary of 400l. per ann.* for himself and clerk ; and as a stimulus to a proper attention to the *employment of the prisoners*, allowed 5 per cent. on the proceeds of their labour.

GARNISH.

This cruel and disgraceful practice, so well known to the unhappy objects, who have had the misfortune to be committed to these places of confinement, whether felon or debtor ; guilty or innocent ; able or unable ; strip or pay, was the first salutation ; this practice was instantly suppressed, and is now unknown.

BREACH OF PRISON.

This disorder, formerly so frequent and alarming, is now effectually remedied. There were a few attempts soon after the present plan was introduced ; but the present government of the place, with the vigilance of the keepers, have prevented any escapes by this mode.

PLAN, CONSTRUCTION, &c. OF THE PRISON.

This place of confinement occupies a lot of 400 feet by 200; on which is erected a large stone building, 184 feet long the north side, two stories high, divided into rooms of equal dimensions, viz. 20 by 18 feet; an entry in the middle of $7\frac{1}{2}$ feet wide, which leads to a hall or passage, extending the length of the building $11\frac{1}{2}$ feet wide, with stairs and windows at each end; the upper story is exactly on the same plan as the lower; the cellars are also on the same plan: there are 8 rooms on each floor, all arched, for the twofold purpose of securing against *fire and escapes*, with two windows in each room. On the east and west end are two wings extending 90 feet south, two stories high, containing five rooms on the floors of each wing, nearly the size of those in front, but with one window, all arched in the same manner also: the ground floors of these were formerly occupied as places of greater security, upon the general principle of dungeons, but have not been used for some time. On the south side is a large stone building, designed for a work-house, where the debtors are now confined. Three hundred feet of the north part of the lot is appropriated to the use of the convict prison, and one hundred feet of the south part to the debtors. The first is divided into portions for the accommodation of the different classes of prisoners. The women have a court yard of 90 feet by 32; the vagrants, &c. one of the same dimensions. The penitentiary house, or solitary cells, about 160 feet by 80. Each yard is furnished with pumps, baths, sewers and necessaries: under the debtors yard, on the north side, runs a natural water course, which is arched, and is a great accommodation.

DISTRIBUTION OF PRISONERS, AND APPROPRIATION OF THE BUILDING, &c.

THE MEN CONVICTS,

For security and air, are lodged on the second floor of the east wing; one room is occupied by the shoe-makers
for

for a shop; one for the taylor and barber, the rest for lodging rooms.

THE WOMEN CONVICTS

Are lodged and employed on the first floor, in the west wing, and have the use of the court yard, already described.

THE WOMEN VAGRANTS

Have the upper floor of the west wing, and occasionally, the use of the women convicts yard.

MEN VAGRANTS

Occupy the first floor of the east wing, and have the use of the yard before described.

SOLITARY CELLS, OR PENITENTIARY HOUSE.

This building, directed to be built by the legislature, was early undertaken, and finished with all possible expedition. It is a plain brick building, three stories high; the first floor is paved with bricks, and is open on the north and south; three arches, running the length and breadth of the building, support the rooms and passages of the house. Each floor is divided into 8 cells, 6 by 8, and nine feet high, and two passages running through the middle; the passages are about 4 feet wide, have a window at one end, which admits light and air, and a stove in the middle to warm the rooms; each cell has a large leaden pipe, which leads to sewers at the bottom, and which are kept clean by smaller pipes, leading from a cistern, into which, occasionally, is conveyed a sufficient quantity of water. The windows are secured by blinds, and wire to prevent conveyances either in or out. The doors and sashes are so constructed as to admit as much air as the prisoner desires.

The large yard is occupied by the convicts, to labour and to air themselves in. The yard, in which the

solitary cells are built, is occupied as a garden, in which vegetables for culinary, and other purposes, are cultivated. It is managed by some of the orderly convicts.

PLAN OF GOVERNMENT AND REGULATIONS OF THE HOUSE.

The order and management of the house is directed by the inspectors, who meet every two weeks, or oftener, as occasion requires; they appoint two of their number, who continue in their appointment one month, as

VISITING INSPECTORS,

Whose duty is to visit the prison, and inspect the management thereof, the conduct of the prisoners, &c: once a week, or oftener, and report to the board at their next meeting. See the Rules.

The governor and judges of the supreme court, and mayor, with all the judges of the several courts of this city and county, as well as the grand juries, visit quarterly. A circumstance which greatly promotes the success of the plan, as it strengthens the hands of the officers, and encourages the prisoners to a propriety of conduct, and thereby claiming their attention and obtaining a remission of their sentence; for they well know if they have conducted themselves improperly, that they have no encouragement *to hope*; but on the contrary, great cause to *fear*; those especially of the worst characters are thus influenced to a careful attention to preserve a propriety of conduct, in order to have some plea for their application for a pardon.

Having thus given a short account of the plan and government of the prison and penitentiary house, I proceed to state the method of treating and employing the convicts at present pursued by the inspectors. It is not probable that this will meet the approbation of every one; but it is the best that the circumstances of the place, and the opportunities of those engaged in the work would admit of. There have been many opinions about the mode of treating the convicts. Some seem to forget that the
prisoner

prisoner is a rational being, *of like feelings and passions* with themselves. Some think that he is placed there to be perpetually *tormented and punished*. Some prescribe a *certain time* as necessary to his cure. One will not allow him the *light* of heaven, or the refreshment of the breeze; the comforts of society, or even the voice of his keeper: while another considers a seclusion from his friends and connections, as a ground for accusation of inhumanity. These opinions have not been overlooked by the inspectors: they have adopted that plan, which upon full consideration was deemed best, though not perfect: and the effects of it have not hitherto disappointed their hopes.

GOVERNMENT.

In every prison good government is necessary; and unless this is kept in view, it will be useless to change the penal system, or expect benefit, either to the prisoners or the community.

It is an *error* very generally entertained, that it is very *difficult*, if not *impossible*, to reduce these characters to order, and to govern them by *mild measures*; and that it requires a person of a *violent and unfeeling disposition*, to manage or keep them in any *tolerable bounds*. I shall avoid saying much on this subject, and limit myself simply, to an account of the management in this house, and *its effects*, and let *the fact* answer those who have been of this opinion. *Mild regulations strictly enjoined*, will meet with little resistance. There should be no hope of impunity, and there will be little necessity for seeking for *the punishment* that shall be the most effectual; but if *punishments* be deemed necessary, let those of a *disgraceful nature* be avoided.

When the present plan was last attempted, the prisoners were informed, that the new system was now to be carried into full effect, that their treatment would depend upon their conduct; and that those who evinced a disposition that would afford encouragement to the inspectors to believe, that they might be restored to their liberty, should be recommended to the governor for a pardon, as soon as circumstances would admit; but if they were convicted again, the law, in its fullest rigour, would be carried into effect against them. A change of
conduct

conduct was early visible. They were encouraged to labour, and a number were employed in carrying stones, and other laborious work, at the building of the solitary cells. Their good conduct was remarked. Many were pardoned, and before one year was expired, their behaviour was, almost without exception, decent, orderly and respectful. This fact is of importance, as it disproves an opinion, that has led to much distress and cruelty, and will, I hope, be an encouragement to those who can feel for this unhappy class of mankind, who have so long been victims to the sad effects of a contrary treatment.

CLEANLINESS.

The house is white-washed three times a year, or oftener, as occasion requires.

The passages and rooms are washed twice a week in summer, and once in winter.

The prisoners have clean linen once a week, and are washed every morning. Towels are hung up in the several passages. The men shave twice a week, and the baths are used in summer.

DRESS.

The men are clothed in woollen jackets, waistcoats, and trowsers in winter, and linen in summer, shirts, shoes, &c. The orderly prisoners, who by their industry earn a sufficiency for the purpose, are allowed a better suit to attend public worship. The principal objects in their cloathing are, *usefulness, æconomy and decency.*

The women are dressed in plain short gowns, of woollen in winter, and linen in summer. Most of the cloathing, at present, is spun, wove, and made up in the house, and is designed to be so altogether in future.

LODGING.

The prisoners are lodged in beds, with sheets and blankets on bedsteads; the beds are filled with red cedar shavings. We have found this regulation greatly conducive to cleanliness and decency. The former practice of prisoners sleeping in their cloaths, and being crowded together

together without any regard to decency, was destructive to the health of the prisoners, and was attended with many other ill consequences, especially where men are collected in the manner they are in prisons.

DIET.

The diet is plain, cheap, and wholesome, but sufficient in quantity, as per diet list, in the rules and orders annexed. No provisions are allowed beside the prison allowance, except the more laborious part, while orderly, who are allowed to get some of the heads of the sheep from the butchers, at their own expence: this is esteemed an indulgence, and is attended with good effects, both physical and moral. Molasses are experienced to be very salutary to the health of the prisoners, as well as useful in gratifying them with a small luxury. The orderly women are sometimes indulged with tea.

EMPLOYMENT.

The men are employed according to their abilities and circumstances. The procuring suitable and sufficient employment was for a considerable time a great difficulty, but there is now a sufficiency of productive and suitable labour for all, and a great number more than are now in the prison.

The principal employments are shoe-making, weaving and tayloring; chipping logwood, grinding plaister of Paris, beating hemp, sawing and polishing marble; occasionally swingling flax, picking oakum, wool, cotton and hair; carding wool for hatters, sawing wood, &c.

The women are employed at heckling, spinning, sewing and washing.

REWARDS AND PUNISHMENTS.

If the prisoners conduct themselves with propriety, they attract the attention of the keepers and inspectors; who make enquiry into their circumstances; encourage them to bring forward recommendations from respectable citizens that they have lived with, or have had a knowledge of them; and, if it should appear proper, or prudent, they are recommended to the governor for a pardon. If any
old

old offenders make application, they are not recommended until there appears some encouragement from long habits of orderly conduct in the house; and then with much caution.

There is no *corporal punishment*, such as stripes, &c. inflicted. But in case of improper behaviour, which very seldom has happened, they are removed to the solitary cells, and abridged in their diet; the consequences of which are stated in the observations on the effects of this mode of treatment, in this work. The apprehensions of the consequence of disorderly conduct, and the hopes arising from a propriety of behaviour, has hitherto held them within the limits of a very commendable attention to the rules of the house.

BREACHES OF PRISON.

There have not been any effected for nearly two years, (the time that the place has been under the care of the inspectors:) the last breach was the evening of the day that the execution of the new system was seriously entered upon; when a plan of escape was meditated by the greater part of the prisoners; fifteen actually made their escape, the rest were prevented from effecting their design, by the activity and resolution of the present keeper.

They have now other and better hopes of obtaining a restoration to liberty, arising from a *propriety of conduct*, which they know has been a *means* of procuring the liberation of many, *for first offences*, under the new system. As the behaviour of many that have been thus discharged has afforded encouragement to a continuance of the practice, it has, with the government of the place, mild treatment, and watchfulness of the officers, not only *entirely secured the place from breaches*, but from *any alarms* on that account for a long time.

PHYSICIAN.

A physician is appointed by law, who visits the prisoners once a week, or oftener, as occasion requires, and affords such assistance to the diseased as the nature of the case requires.

RELIGIOUS DUTIES.

One day in the week being set apart for this purpose, by all denominations of christians; it is a regulation of the house, that all the prisoners assemble on that day, for the purpose of public worship; on which some one or other of the ministers of the different religious denominations attends. It is rare that the day is spent without the friendly visits of some well disposed person, for the purpose of promoting this part of the christian duties, a service obviously important, and which, it is to be hoped, will always be attended to by those who believe it their business to labour for the restoration of such as have deviated from the paths of rectitude and virtue.

The prisoners are generally desirous of attending, and always conduct themselves with decency and attention, and some appear to be benefited. The afternoon of the day is mostly spent, by many of them, in reading; proper books being furnished for that purpose.

EFFECTS OF THIS MANAGEMENT ON THE CONDUCT OF THE PRISONERS.

Whilst the visiting committee of the prison society attended to relieve the distresses of the prisoners, they were considered as their best friends, and it was impossible but that the committee, on many occasions, might be deceived by the accounts of the artful and depraved characters in confinement, who, no doubt, frequently made very improper applications of the assistance afforded them. But, no sooner was the meditated reform attempted, than they manifested their opposition, preferring their state of wretchedness, to any alteration that they knew would deprive them of the indulgence in those excesses of debauchery and riot, that had long prevailed, in this as well as other prisons. The reform was, however, attempted, and persevered in, to the apparent danger of all concerned in its promotion, from these desperate and disappointed characters, consequences not unreasonable to expect. After much labour and patience, they were reduced to some degree of order. Mild, but firm measures were adopted, and order and quietness gradually effected, but not till some time after the prison was placed under

under the direction of the inspectors, who they knew were clothed with a power of obtaining a remission of their sentence, or fixing it, without the most distant prospect of hope: this led to a circumspection of conduct, for they knew that all improper behaviour would be reported to the inspectors. Different kinds of labour were introduced, but it was a considerable time before *proper* kinds were obtained. Time and perseverance, however, overcame this great obstacle, and employment, at length, became desirable, and much care observed, by the prisoners, to preserve a due attention to the rules of the house, any material deviation being attended with seclusion from the society and privileges of the orderly prisoners. The men were early relieved from their irons, and few were found to require rigorous treatment. But one instance has occurred of refusal to work, which was soon remedied, by a separation of the criminal from the orderly prisoners, and confining him in the solitary cells, where he remained some weeks, without labour, bed, or furniture, of any kind, except a vessel to hold his drink, and another his mush, and a blanket. In this cheerless habitation, he spent many anxious hours, confined to the reflections inseparable from guilty minds; he was ignorant how long his present situation was to continue; he was without employment, nothing to amuse him in a state of suspense and uncertainty, when the hour would arrive that was to restore him, or how he should atone for his offence; he made many protestations, and used many means to obtain a friend. The object being obtained for which he was separated from the rest, he was restored. The utmost propriety of conduct has been observed by this man ever since. Besides this instance, there has but one occurred, of a wilful violation of the rules, among the men prisoners, which I shall mention very briefly, which will prove the effect of this mode of treatment on the conduct of the prisoners. Two men had some difference; they agreed to decide it by fighting, but knowing the consequences of a breach of the rules, agreed to accomplish it in a room by themselves, in order to keep the other prisoners in apparent ignorance, who they knew would suffer similar treatment with themselves, in case of discovery. The scuffling unexpectedly reached the ears of the keepers, who repaired to the room, found the disorder, and led the combat-

ants to the cells, where they had time and opportunity of settling the matter in dispute in a more reasonable manner.

One more instance is all I shall relate, which was the case of a woman, of an extremely bad character, an old offender, and very ungovernable, who had made an attempt to burn the prison. She stood the confinement for some weeks with firmness, but finding that the keeper was easy ; no provocation offered to keep up her passions ; no remedy ; no prospect of resenting her treatment, at length submitted, but was for some time retained in this cheerless place, making many promises ; among the rest, offered to perform two days work, each day, during her confinement, and to agree to an immediate return to the cells, upon non-compliance with this promise, or of any of the rules of the house. She was now informed that the officers had no object in view, beside the strictest attention to the rules of the house, and the real welfare of those whose lot it was to be committed to their care ; that it was vain to oppose the order of the place ; that her disorderly conduct could only affect herself ; and that if she would accept her restoration upon these considerations, she should have it : she accepted it. The consequences resulting from this mode of treating offenders, and of these few instances of seclusion, have been the most agreeable order and quietness, and no occasion of coercion has occurred besides for many months.

The order in their employments ; their demeanor towards the officers ; harmony amongst each other ; and their decorum and attention, at times appointed for religious worship, have been obvious, and are such as have obtained the approbation of all those who have been witnesses to it ; and we trust that the impressions received in this secluded state of existence, will have a happy influence towards promoting the great object contemplated by the change of the penal code by the legislature of this commonwealth.

OBJECTIONS TO THE PRESENT PLAN BRIEFLY CONSIDERED.

The principle objections that have been offered against this plan have been on account of—

- I. The Expence.
- II. Want of Suitable Labour.
- III. Want of Accommodation.
- IV. Want of Security against Escapes.
- V. Want of Benefit to Society.

As to the first, the law requires, that an account shall be opened with the prisoners, which is done, and they are charged with the costs of prosecution, their diet and cloathing, and credited by their labour, and the balance, if any, is to be given them *at discharge*, either in money or cloaths, at the discretion of the inspectors, or both; considerable balances have been found in favour of some, and few but now have more or less; some balances have been as high as £. 10, many near it; so that as to their individual expence, there is not much doubt of their being able to earn as much as will pay all the expence they occasion to the county; and unless the numbers become *too few*, might be made to contribute towards paying the salaries of the officers of the house. There are men now in the house who appropriate a part of their earnings to the support of their families. It is a point carefully attended to, that the prisoner goes out *well clothed*, and mostly with money in his pocket; a regulation too obvious to need much comment. The former plan of turning a poor wretch, after a long confinement, perhaps for fees only, in idleness, without the least prospect or possibility of obtaining that support, which he immediately stood in need of, was miserably defective. The prisoner discharged, generally stands in more need of the friendly assistance of the humane, than almost any other character. This assistance is afforded in this city, when occasion requires, by the society for alleviating the miseries of public prisons.

II. WANT OF SUITABLE LABOUR.

This was long a serious objection, but patience and perseverance have overcome this difficulty.

Shoe-making,

Shoe-making, tayloring, weaving, chipping logwood, beating hemp, grinding plaister of Paris, grinding and polishing marble, will long afford a sufficiency and variety of employment ; and all are sufficiently productive. Spinning, heckling, picking oakum, wool, flax, and cotton, carding wool for hatters, with many other employments, may occasionally be profitably used by the weakly and infirm. To those who think that the labour should be public, hard and disgraceful, I will just observe, that this mode has been tried and proved ineffectual. *Hard labour* is comparative, and depends upon the state of the person employed ; and when we take into consideration the nature of the diet, and life of the prisoners, most of the first mentioned employments are found to be sufficiently severe.

As to *disgraceful labour* or *treatment* of any kind, it has not had, nor can have, any valuable tendency towards restoring an offender to usefulness in society, and it is therefore discontinued.

III. WANT OF ACCOMMODATION.

As to this objection, it is evidently the duty of every government to provide it. It is a strange kind of œconomy, to hang our fellow-creatures to avoid the expence of preparing a proper place of confinement : but I may add, that our empty rooms have encreased so as not only to admit of more *convenient* accommodation, but far beyond our expectations.

IV. WANT OF SECURITY AGAINST ESCAPES.

I have already stated, that prisoners are, and always may be, secured by proper care, watchfulness, and lenient treatment. Beside the gaoler, turnkey, and clerk, there are but two officers in the house ; one over the men, and one over the women ; and they are found to be quite sufficient, whilst the place is conducted upon the present plan.

V. WANT OF BENEFIT TO SOCIETY.

How little effect the former system of punishments had in preventing crimes, is too well known to need any explanation at present. We are now to examine, whe-

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ther any beneficial consequences have followed the alteration that has taken place in the treatment of the convicts.

It is not more than two years that the new regulations have had their full operation, although the law which authorised them, was passed some time before. But in that short time, the effects which have flown from them, have been remarked with much satisfaction by the citizens at large, as well as by those whose situation offered superior opportunities for observing them. These effects proceed, either from a real reformation taking place in the minds of the prisoners, or from a terror of the consequences which they know will attend a second confinement.

During their continuance in prison, they learn many things which operate as a check upon the commission of new crimes. They learn the difficulty of evading justice; and that, as the laws are now mild, they will be strictly put in execution. They now see that juries are not unwilling to convict, and that pardons are not granted till they discover some appearances of amendment. The penalty, though not severe, is attended with many unpleasant circumstances, and many of them deem the constant return of the same labour and of coarse fare, as more intolerable, than a sharp, but momentary punishment. They know that a second conviction would consign them to the solitary cells, and deprive them of the most distant hopes of pardon. These cells are an object of *real terror* to them all, and those who have experienced confinement in them, discover by their subsequent conduct, how strong an impression it has made on their minds. They know that mercy abused will not be repeated, and neither change of name nor disguise will enable them to escape the vigilant attention with which they are examined. These reflections, or reflections like these, have had their weight: for out of near 200 persons, who at different times have been recommended to, and pardoned by the governor, only four have been returned; three from Philadelphia, re-convicted of larceny, and one from a neighbouring county. As several of those, thus discharged, were old offenders, there was some reason to fear, that they would not long behave as honest citizens. But, if they have returned to their old courses, they have chosen to run the *risk* of being hanged in

ed in other states, rather than encounter the *certainty* of being confined in the penitentiary cells of this. We may therefore conclude, that the plan adopted has had a good effect on these; for it is a fact well known, that many of them were heretofore frequently at the bar of public justice, and had often received the punishment of their crimes under the former laws.

Our streets now meet with no interruption from those characters that formerly rendered it dangerous to walk out in an evening. Our roads in the vicinity of the city, so constantly infested with robbers, are seldom disturbed by those dangerous characters. The few instances that have occurred of the latter, last fall, were soon stopped. The perpetrators proved to be strangers, quartered near the city, on their way to the westward.

Our houses, stores, and vessels so perpetually disturbed and robbed, no longer experience those alarming evils. We lie down in peace, we sleep in security.

There have been but two instances of burglaries in this city and county for near two years. Pick-pockets, formerly such pests to society, are now unknown. Not one instance has occurred of a person being convicted of this offence for two years past. The number of persons convicted at the several courts have constantly decreased; thirty and upwards, at a session, have frequently been added to the criminal list: at this time, when both city and county courts are but a few days distant, there are but *five for trial*! Such have been our measures, such is the state of things, and such the effect. If any one can assign other causes for them, than are here adduced, they must have other opportunities, other means of information than I am acquainted with.



A P P E N D I X.

D I R E C T I O N S

F O R T H E

I N S P E C T O R S , & C . O F T H E G A O L

O F T H E

C I T Y A N D C O U N T Y O F P H I L A D E L P H I A .

WHEREAS, by a " Supplement to the penal laws of this state," it is enacted, " that the prison inspectors, appointed in pursuance of the act in such case provided, and of the said supplement, shall have power, with the approbation of the *Mayor, two Aldermen* of the said city, and *two of the Judges of the Supreme Court, or two of the Judges of the Common Pleas of Philadelphia County*, to make rules and regulations for the government of all convicts confined in the said prison, not inconsistent with the laws and constitution of this commonwealth."

It is therefore ordained, that the said inspectors, seven of whom shall be a quorum, shall meet at the prison, quarterly, on the first Mondays in January, March, June, and September; and on every second Monday throughout the year: and, may also be specially convened by the visiting inspectors, when occasion requires. At their first meeting, they shall appoint two of their members to be visiting inspectors; one of whom shall serve for

one month, and the other for two months, continuing to make a fresh appointment to this office monthly.

VISITING INSPECTORS.

The VISITING INSPECTORS shall attend at the prison together at least twice in each week, and oftener if occasion require ; at which times they shall examine into and inspect the management of the prison, the conduct of the keeper, deputies, and assistants : they shall also carefully enquire into, and report the conduct and disposition of the prisoners, and see that they be *properly* and *sufficiently* employed ; that proper attention to cleanliness be observed ; that due enquiry be made respecting the health of the prisoners, and that their food be served in quantity and quality, agreeably to the directions of the board ; that the sick be properly provided for, and that suitable cloathing and bedding be furnished to all—They shall hear the grievances of the prisoners, receive their petitions, and bring forward the cases of such, whose conduct and circumstances may appear to merit the attention of the board—They shall be careful to prevent improper out-door communications with the prisoners ; that no spirituous liquors be admitted on any pretext whatever, except by order of the physician—That no intercourse be admitted between the sexes ; that the regulations of the board, respecting the distribution of the prisoners, according to their characters and circumstances, be attended to ; that proper means be used to promote religious and moral improvement, by the introduction of useful books, and procuring the performance of divine service, as often as may be.

They shall from time to time report to the commissioners of the country, all such prisoners who have been sent from other countries, and have incurred a charge for their maintenance more than the profits of their labour will defray, in order that the compensation may be had as the law directs.

They shall cause fair returns to be made out, and laid before the board monthly, of all the prisoners, their crimes, length of confinement, by whom committed, when and how discharged since the preceeding return.

They shall attend to the keeper, deputies and assistants, by observing their treatment of the prisoners, and suffer

no persons addicted to liquor, making use of profane swearing, or other improper language, to be employed on this duty.

They shall constantly bear in mind, that all men are free, until legal proof be made to the contrary; they will therefore take care that no person be held in confinement on bare suspicion of being a runaway slave; and those persons who are actually slaves, and not applied for by proper claims within a limited time, shall be returned to to the supreme or other proper court for a habeas corpus to remove them according to law; and generally they shall see, that the present and subsequent directions of the board be carried into effect.

KEEPER OF THE PRISON.

The KEEPER OF THE PRISON, besides attending to the safe keeping of the prisoners, shall carefully inspect into their moral conduct, shall enjoin a strict attention to the regulations, relative to cleanliness, sobriety and industry, and be careful to avoid that penalty which is incurred by suffering a criminal to escape. He shall also, with the approbation of two of the inspectors, provide a sufficient quantity of stock and materials, working tools, and implements for the constant employment of the prisoners. He shall deliver out their work and receive it from them by weight or measure, as the case may be, in order that embezzlement or waste may be prevented, by the prisoners; and by every laudable means in his power make their labour as profitable as possible. He shall, as the law directs, keep separate accounts for all convicts sentenced to labour six months and upwards, in which the expence of cloathing and subsistence shall be charged, and a reasonable allowance for their labour be credited; these accounts shall be balanced at short periods, in order that the prisoner, at his discharge, may receive the proportion, if any, that is due to him.

He shall cause all accounts concerning the maintenance of the prisoners to be entered in a book or books for the purpose, and shall also keep separate accounts of the stock and materials purchased by him; shall take proper vouchers wherever money is expended; shall regularly credit the materials, manufactured and sold, mentioning to whom and when disposed of; and at every quarterly meet-

ing of the board, shall exhibit his accounts and vouchers for their approbation and allowance.

TURNKEY.

The TURNKEY shall admit no persons except the inspectors, keeper, his deputies, servants or assistants, officers and ministers of justice, counsellors or attorneys at law, *employed by a prisoner*, ministers of the gospel, or persons producing a written licence signed by two of the said inspectors; and the latter only, in his presence or some one of the officers of the prison. He shall prevent the admission of any spirituous liquors, or any other improper article to the prisoners, and on every attempt of this kind that may be detected, he shall make discovery thereof, in order that the penalty inflicted by law may be recovered.

KEEPER'S DEPUTIES, &c.

The KEEPER'S DEPUTIES and ASSISTANTS shall be careful to preserve cleanliness, sobriety and industry among the prisoners; to inform them of the rules of the house, and to enjoin an observance of them by mild, yet firm measures; they shall be careful to prevent embezzlement, waste or destruction of implements or materials; they shall constantly reside in the house, and inspect the conduct and labour of the prisoners, report the negligent, profane or disorderly (who shall be removed) and the industrious quiet and exemplary, that they may be recommended by the visiting inspectors, who have it in charge to bring such to the favorable notice of the board.

WATCHMEN.

The WATCHMEN shall continue in the prison all night, two of whom shall be within the iron gate, and two in the inspectors room; they shall patrol the inside constantly, and strike the bell every hour; they shall report any remarkable occurrence of the night, to the clerk of the prison, on the succeeding day, who shall commit the same to writing, and lay it before the visiting inspectors, at their next meeting; and as the safety of the prison
so

so much depends on their vigilance and attention, it is required, that no circumstance shall prevent the performance of their regular and frequent rounds.

Signed by order of the Board,
26th February, 1792.

GEORGE MEADE, Chairman.

APPROVED.

JOHN BARCLAY, Mayor.

APPROVED.

WILLIAM ROBINSON, jun. } Judges of the Court
THOMAS L. MOORE, } of Common Pleas.

APPROVED.

HILARY BAKER, } Aldermen.
J. M. NESBITT, }

RULES, ORDERS, and REGULATIONS, for the
GAOL of the CITY and COUNTY of PHILA-
DELPHIA.

I.

NO persons whatever shall be admitted to a communication with the prisoners, except the keeper, his deputies, servants or assistants, the inspectors, officers of justice, counsellors, or attornies at law, employed by a prisoner, ministers of the gospel, or persons authorised by two of the inspectors.

II.

The males and females shall be employed, and shall eat and be lodged in separate apartments, and shall have no intercourse or communication with each other.

III.

The prisoners shall be constantly employed in such labour as the keeper (with the concurrence of the inspectors) may consider best adapted to their age, sex and circumstances : regard being had to that employment which is most profitable.

IV.

If any of the prisoners shall be found remiss or negligent in performing what is required of them, to the best
of

of their power and abilities, or shall wilfully waste or damage the goods committed to their care, they shall be punished for every such offence, as may be hereafter directed.

V.

If any of the prisoners shall refuse to comply with these regulations, or to obey the officers of the prison, or shall be guilty of profane cursing or swearing, or of any indecent behaviour, conversation or expression, or of any assault, quarrel or abusive words to, or with any other person, they shall be punished for the same, in manner hereafter directed.

VI.

The convicts, prisoners for trial, servants, runaways, and vagrants, shall be separately fed, lodged and employed.

VII.

Offenders shall be reported to the inspectors, and punished by close, solitary confinement, and their allowance of food reduced; but in cases where the security of the prison is in danger, or personal violence offered to any of the officers, then the said officers shall use all lawful means to defend themselves, and secure the authors of such outrage.

VIII.

No officer or other person shall sell any thing used in the prison, nor buy, sell or barter any article, by which they can have benefit; neither shall they suffer any spirituous or fermented liquors to be introduced, except such as the keeper may use in his own family, or for medical purposes prescribed by the attending physician, under the penalty of five pounds, if an officer, and of dismissal from office; or if a prisoner, he shall be proceeded against as in the seventh article.

IX.

The prisoners on the first admission shall be separately lodged, washed, and cleansed; and shall continue in such separate lodging, until it shall be deemed prudent to admit them among the other prisoners; and the cloathes in which they were committed shall be baked, fumigated, and laid by; to be returned them at their discharge, and during their confinement to be cloathed according to law.

X.

Any persons detected in gaming of any kind, shall be proceeded against agreeably to the 7th article.

XI.

XI.

Any person who shall demand or exact a garnish, beg, steal, or defraud, shall be punished as directed by the 7th article.

XII.

The prisoners who distinguish themselves by their attention to cleanliness, sobriety, industry and orderly conduct, shall be reported to the inspectors, and meet with such rewards as is in their power to grant or procure for them.

XIII.

The prisoners shall be furnished with suitable bedding, shall be shaved twice a week, their hair cut once a month, change their linen once a week, and regularly wash their face and hands every morning.

XIV.

The prison shall be white-washed at least twice in the year, and oftener, if occasion require; the floors shall be swept every morning, and washed on Wednesdays and Saturdays, from 20th of May to the 1st October, and once a week for the remainder of the year.

XV.

The sweepings of the prison shall be collected and deposited in a place for the purpose, and removed once in every two weeks; and the necessaries shall also be cleansed daily.

XVI.

The yards of the prison shall be kept free from cows, hogs, dogs, and fowls.

XVII.

The physician for the time being shall keep a register of the sick, their disorders, and his prescriptions; and shall render his accounts for the examination and allowance of the inspectors at each of their quarterly meetings.

XVIII.

At the performance of divine worship, all the prisoners shall attend, except such as may be sick.

XIX.

The Turnkey, deputies, and assistants shall be tradesmen in order that the trades and employment within the house shall be more effectually and profitable executed.

XX.

All prisoners committed as vagrants, and who have been convicts, shall be confined in the cells during their commitment.

XXI.

XXI.

No provision, other than the prison-allowance, shall be furnished to a convict or vagrant, without the permission of the visiting inspectors.

XXII.

There shall be wardsmen appointed by the visiting inspectors, whose duty it shall be to keep the windows, passages, yard, and privies clean, and who also shall be lodged, and fed in a room by themselves.

XXIII.

Runaway or disorderly apprentices and servants shall be separately fed, lodged and employed, and the keeper shall give notice to their masters or mistresses, at the time of their commitment, of the charge that will accrue for their daily maintenance, who may at their option agree to pay the same, or provide the necessary food themselves.

XXIV.

The charge for the maintenance of slaves shall be the same as that of apprentices or runaways.

XXV.

The diet of prisoners shall be—on

Sunday, one pound of bread, and one pound of coarse meat made into broth.

Monday, one pound of bread, and one quart of potatoes.

Tuesday, one quart of Indian meal made into mush.

Wednesday, one pound of bread, and one quart of potatoes.

Thursday, one quart of Indian meal made into mush.

Friday, one pound of bread, and one quart of potatoes.

Saturday, one quart of Indian meal made into mush.

Besides the above, a half pint of molasses shall be distributed to every four prisoners, on every Tuesday, Thursday, and Saturday.

Signed by order of the Board,

GEORGE MEADE, Chairman,

26th February, 1792.

APPROVED. JOHN BARCLAY, Mayor.

APPROVED. WILLIAM ROBINSON, jun. } Judges of the Court
THOMAS L. MOORE, } of Common Pleas.

The foregoing rules, orders and regulations, are also approved by us.

HILARY BAKER }
J. M. NESBITT, } Aldermen.

On

On Tuesday, the 8th day of May, 1787, a number of gentlemen assembled, and agreed to associate themselves in a society, to be entitled, "The Philadelphia Society, for alleviating the Miseries of Public Prisons," when the following paper was read, and resolved upon to be the future Constitution of this Society, *to wit*:

CONSTITUTION of the PHILADELPHIA SOCIETY,
for alleviating the Miseries of Public Prisons.

—"I was in prison, and ye came unto me.

And the King shall answer and say unto them, Verily I say unto you, inasmuch as ye have done it unto one of the least of these my Brethen, ye have done it unto me."

MATTH. XXV. 36—40.

WHEN we consider that the obligations of benevolence, which are founded on the precepts and example of the author of Christianity, are not cancelled by the follies or crimes of our fellow-creatures; and, when we reflect upon the miseries which penury, hunger, cold, unnecessary severity, unwholesome apartments, and guilt, (the usual attendants of prisons) involve with them, it becomes us to extend our compassion to that part of mankind, who are the subjects of these miseries, that by the aids of humanity, their undue and illegal suffering may be prevented: the links, which should bind the whole family of mankind together under all circumstances, be preserved unbroken: and, such degrees and modes of punishment may be discovered and suggested, as may, instead of continuing habits of vice, become the means of restoring our fellow-creatures to virtue and happiness. From a conviction of the truth and obligation of these principles, the subscribers have associated themselves under the title of "The Philadelphia Society, for alleviating the Miseries of Public Prisons." For effecting these purposes, they have adopted the following Constitution:

I. The officers of the society shall consist of a president, two vice-presidents, two secretaries, a treasurer, four physicians, an electing committee of twelve, and an acting committee of six members; all of whom, except the

the last mentioned committee, shall be chosen annually by ballot, on the second Second-day, called Monday, in the month called January.

II. The president, and in his absence, one of the vice-presidents shall preside in all meetings, and subscribe all the public acts of the society. The president, or in his absence, either of the vice-presidents shall moreover have the power of calling a special meeting of the society whenever he shall judge proper. A special meeting shall likewise be called at any time when six members of the society shall concur in requesting it.

III. The secretaries shall keep fair records of the proceedings of the society, and shall correspond with such persons and societies as may be judged necessary to promote the views and objects of the institution.

IV. The treasurer shall keep all the monies and securities of the society, and shall pay all orders signed by the president or one of the vice-presidents, which orders shall be his vouchers for his expenditures; he shall, before he enter upon his office, give a bond of not less than two hundred pounds, for the faithful discharge of the duties of it.

V. The business of the physicians shall be to visit the prisons when called upon by, or to give advice to the acting committee respecting such matters as are connected with the preservation of the health of persons confined therein, or subject to the government of the officers of the prisons.

VI. The electing committee shall have the sole power of admitting new members. Two-thirds of them shall be a quorum for this purpose; and the concurrence of a majority of them, by ballot, when met, shall be necessary for the admission of a member. No member shall be admitted, who has not been proposed at a general meeting of the society; nor shall an election for a member take place in less than one month after the time of his being proposed.

VII. The acting committee shall visit the public prisons, or such other places of confinement or punishment as are ordained by law, at least once every week. They shall enquire into the circumstances of the persons confined; they shall report such abuses as they shall discover to the officers of government who are authorised to redress them; and shall examine the influence of confinement

ment or punishment upon the morals of the persons who are the subjects of them. They shall have a right, with the concurrence of the president, or one of the vice-presidents, to draw upon the treasurer for such sums of money as shall be necessary to carry on the business of their appointment. Four of them shall be a quorum. After the first election, two of their number shall be relieved from duty at each quarterly meeting, and two members shall be appointed to succeed them.

VIII. Every member, upon his admission, shall subscribe the constitution of the society, and contribute ten shillings annually, in quarterly payments, towards defraying its contingent expences. If he neglects to pay the same for more than two years, he shall, upon due notice being given him of the delinquency, cease to be a member.

IX. The society shall meet on the second Second-day, called Monday, in the months, called January, April, July, and October, at such place as shall be agreed to by a majority of the society.

X. No law or regulation shall contradict any part of the constitution of the society; nor shall any law or alteration in the constitution be made, without being proposed at a previous meeting. All questions shall be decided, where there is a division, by a majority of votes. In those cases, where the society is equally divided, the presiding officer shall have a casting vote.

E X T R A C T

FROM THE REPORT OF THE BOARD OF INSPECTORS
OF THE PRISON.

Statement of the number of Convicts, &c. now confined
in the Jail of the City and County of Philadelphia, viz.

Number of Convicts & nature of their crimes.							Where Convicted.		Total Number.
Burglary.	Felony.	Deceit.	Forgery.	Horse stealing.	Highway robbery.	Receiving stolen goods.			
1	12	1	2				City of Philadelphia.	16	
	4			2	1	1	County of Philadelphia.	8	
	1						County of Huntingdon.	1	
2	2						County of Franklin.	4	
	3			2			County of Berks.	5	
		1					County of Delaware.	1	
2							County of Washington.	2	
5	22	2	2	4	1	1	27 Men and 10 Women.	37	



The number of convicts on the 13th day of May,
1791, was 143.

GEORGE MEADE, Chairman.

Philadelphia, 3d of Dec. 1792.

A Table exhibiting a View of the number of Persons convicted of all capital and certain other Crimes in Pennsylvania.

Years.	Crime against Nature.			Robbery.			Burglary.			Counterfeiting the Coin.			Rape.			Arson.			Murder.			Man-slaughter.			Treason.			Counterfeiting bills of credit.			
	Acquitted,	Convicted,	Executed,	Acquitted,	Acquitted of robbery, but guilty of larceny.	Convicted,	Executed,	Acquitted,	Acquitted of burglary, but guilty of larceny.	Convicted,	Executed,	Acquitted,	Convicted,	Executed,	Acquitted,	Convicted,	Executed,	Acquitted,	Acquitted of murder, but guilty of man-slaughter.	Convicted,	Executed,	Acquitted,	Convicted,	Executed,	Acquitted,	Convicted,	Executed,	Acquitted,	Convicted,	Executed,	
1779						5	4	1		3	2				1			6	1	5	4						3	2			
1780				6		3	3	2	2	6	5				1		1	4		2	2						4	2			
1781				3		3	3	7		10	4				2	1	1	1		2			1	1				3	2		
1782				4		15	3	3		8	4							2		1	2						1	1			
1783		1		1		2	2	3	2	5			1	1		2	3		2	3	5	4	1								
1784				4		7	5	4		8	8		1					3		1											
1785		1	1	2				2	3	4	2		1	1	1			7		1	5	5	1								
1786	}	..	..	..	..	..	..	1	2	10								4				3									
								3		4																					
								5		7																					
1787				1		6		5		7											3	2	1								
1788		1		2		7		3		14	1	1	1	1	1	1			3				1								
1789				1	1	22	1	2		5		1						3		6	6										
1790				1		11				5								2		3											
1791						2				6													1	1							
1792				1		3				5				2	2	1			1		2	1	1								
Total	3	1		26	1	93	21	37		9	100	26	2	1	1	9	9	5	7	5	1	38		11	34	26	12	5	4	4	2

I. The Table states the number of *Offenders*, not of *Convictions*; therefore, where a person appears to have been twice convicted of the same crime, at the same sessions, no notice is taken of it in the table.

II. The convictions of 1782, several attainders, by outlawry, are included in the robbery committed being matter of public notoriety.

III. The dotted line separates those offences of the year 1781 which were previous to the penal laws, from those which were to it.